

6 Lh
S T A T E

OF THE

PRESENT FORM OF GOVERNMENT

OF THE

PROVINCE OF QUEBEC, *Province*

WITH *N. [App.]*

A LARGE APPENDIX;

CONTAINING

EXTRACTS FROM THE MINUTES OF AN INVESTIGATION INTO THE PAST ADMINISTRATION OF JUSTICE IN THAT PROVINCE,

INSTITUTED BY ORDER OF

LORD DORCHESTER, IN 1787,

AND FROM

OTHER ORIGINAL PAPERS. *[By Sir James Mack]*

L O N D O N:

PRINTED FOR J. DEBRETT, OPPOSITE BURLINGTON-HOUSE,
PICCADILLY.

MDCCLXXXIX.

433

STATE

MINISTRY OF GOVERNMENT

PROVINCE OF QUEBEC

41, RUE ALBERT



100, DORCHESTER ST.

OTTAWA, ONTARIO

E R R A T A.

Page 49, line 14, for *ease*, read *case*.

71, line 4, from the bottom, after the words *safety of the empire*, refer to Appendix. No. XVIII.

80, at the end of the note, add, *See Appendix. No. VIII.*

118, line 17, for *of the party*, read *of party*.



S T A T E, &c.

GOVERNMENT was instituted for the good of the subject; to secure the peace, the happiness, and the prosperity of the society: and all Governments are so far despotic, as they are perverted from these principles. Unfortunately for mankind, in looking over the map of the world, we see few countries, or states, where these objects are properly attended to; or, where the people enjoy that political rank and liberty, which nature designed for them.

The British nation stands peculiarly distinguished in this respect; blessed with a constitution founded on clear and generous
B principles,

principles, where the executive and legislative powers are so wonderfully organized, as to have secured to the subject all the advantages which flow from social liberty.

To antiquity, such a system was an object of mere speculation; but its excellence is now the pride of England, and the admiration of the world: its principles are drawn from the purest and plainest reason, and directed to the most important ends of humanity and government; the restraints which it imposes on the individual, operate as his protection; equal laws secure to him equal rights; and he lives, the free citizen of a free state; his property secured, and his liberty protected, by the common interest which the whole community has in their vindication, when threatened or invaded.

One of the principal and fundamental maxims of that constitution is, that the people are allowed to participate in the legislative authority: and although the representation

sentation is not so general, as by some may be deemed consistent with the rights of the whole people, it will be sufficient for us to observe, that it is to the Commons' House of Parliament, that these kingdoms are indebted for the freedom of the government, and the liberty of the subject.

Representation therefore has ever been considered as the inherent right of every British subject; they enjoy it in Britain; and in settling distant colonies, or conquered provinces, the British government has constantly acknowledged the maxim, by allowing the people a representative body in the legislature of each colony or province respectively. One province only has been restrained from the exercise of this privilege—the province of Quebec—though we trust we shall be able to shew, that there is nothing in its situation, or in the conduct of its inhabitants, which will justify its being

so peculiarly marked, as if unworthy to enjoy the privileges of British subjects.

There is not any thing of so much importance to the inhabitants of a country, as the nature of their government. Nor is there any political question, which involves in its discussion consequences more extensive, or more seriously interesting, than that which respects the claims to a free constitution, of a people labouring under the oppression of an arbitrary government. No objects therefore can be more strongly entitled to the serious attention and discussion of the British legislature, than the complaints from the province of Quebec; more particularly as these complaints have proceeded from the oppressive operation of its own solemn act, which excluded that branch of the British empire from the exercise and enjoyment of privileges, confirmed and protected by the constitution of England.

Confident

Confident therefore that Parliament will fully investigate a matter of so great importance to the honour and interest of the nation, we will enter on the subject of the present government of the province of Quebec, with that respect which is due to those we address, and with that firmness which the grievances complained of cannot but excite and justify.

The province of Quebec was annexed to the British empire by the treaty of Paris in the year 1763, when the inhabitants thereof became subject to the duty of allegiance, and entitled to protection; and to a participation of all privileges as British subjects.

His Majesty's gracious intentions for the security, happiness, and prosperity of the inhabitants of that newly-acquired province, were fully set forth in his royal proclamation, bearing date the 7th of October 1763, in the following words:

B 3

“ We

“ WE have, &c. given exprefs power and
 “ direction to Our faid Governors of Our
 “ faid Colonies refpectively, that fofoon as
 “ the ftate and circumftances of the faid
 “ Colonies will admit thereof, they fhall,
 “ with the advice and confent of the mem-
 “ bers of Our Council, fummon and call
 “ General Affemblies within the faid go-
 “ vernments refpectively, in fuch manner
 “ and form, &c†.

Thefe gracious intentions of eftablifhing
 a free and liberal government in that pro-
 vince, were further confirmed by his Ma-
 jefty’s commiffion of Civil Governor to Ge-
 neral Murray, dated 21ft of November 1763,
 which recites

“ And We do hereby give and grant
 “ unto you the faid James Murray, full
 “ power and authority, &c. fofoon as the
 “ fttuation and circumftances of Our faid

† See Appendix, No. I.

“ province,

“ province, &c. to summon and call General Assemblies of the Freeholders and Planters within your said government, &c.*”

From these public and authentic instruments, his Majesty's subjects, then residing in that province, flattered themselves, that a free British constitution would soon be established; and they eagerly looked forward to that period, when the troubles necessarily attendant on the military state, in which that country had so long been held, would cease; and the necessary arrangements be made for convening the representatives of the people.

These expectations acquired new vigor, from the proceedings of the Governor and Council in their first session, when they established and constituted the courts of justice for the province, by the ordinances of the

* See Appendix, No. II.

17th of September and 6th of November 1764, entirely after the English form, and directed the judges to decide all causes brought before them, according to the laws of England*.

The people were happy to see that the Governor and Council, in compliance with his Majesty's gracious intentions, had laid the foundation of a British constitution for the province, in the courts of justice; and as his Majesty had not delegated, by any public instrument, any legislative authority to be exercised by the Governor and Council alone, they expected that an assembly of the representatives of the people would soon be called, to reconcile, in a legal manner, the new constitution, with the antient laws and customs of the country. Numbers of his Majesty's natural born subjects, in the mean time, in conse-

* See Appendix, No. III.

quence of those public and authentic instruments, were induced, from a spirit of enterprise, and in pursuit of commercial advantages, to resort to, and settle in, that country; fully persuaded that in so doing, they relinquished none of those privileges they had ever enjoyed under his Majesty's government: but to the astonishment of the whole province, the Governor and Council afterwards assumed and exercised the whole powers of legislating; and passed and issued, acts and ordinances, contrary to his Majesty's express orders in his commission to the Governor. This occasioned a general alarm among the people; and the old or natural born subjects, impressed with the idea of the confusion into which the affairs of the province would be involved, by the operation of laws thus illegally, as they conceived, ordained, did, in the autumn of the year 1765, petition his Majesty, that he would be graciously pleased to relieve them
from

from such a disagreeable situation, and order the Governor to call an assembly of the representatives of the people, that they might have the satisfaction of regulating their affairs by, and obeying, laws legally enacted and made.

As no relief was granted in consequence of that petition, and as the distress and confusion of the affairs of the province daily increased, they, in the year 1770, addressed petitions to his Majesty, and to both Houses of Parliament, for the same objects :

And again, by their petitions in the year 1773, they reiterated their complaints, and prayers for relief to his Majesty, and to both Houses of Parliament.

Such was the regular progress of complaint from that province ; and the people certainly had every reason to expect that the prayers of their petitions would be granted —Canada had then been in full possession of his Majesty, and under a civil government,

ten years—a period certainly fully sufficient to have assimilated the Canadian new subjects to British manners and customs; to have promoted their acquiring a knowledge of our language, to have reconciled them to such parts of the laws of England, as were absolutely necessary to be established, as relatively connected with and dependant on Great Britain; and to have prepared them for a full participation of the rights and privileges of British subjects, by a free representation of the people. What progress had been made in these necessary objects, how far the officers of government had succeeded in convincing the new-acquired subjects of the superior advantages, security, and dignity of British subjects over those of every other nation or kingdom in the world; or whether the necessary pains had been taken to effect these desirable purposes, we will not presume to say: the British legislature, however, judged it expedient, in the
year

year 1774, to pass an act, commonly known by the name of the Quebec Act, by which a system of government was established for that province, on principles very different from the reasonable expectations the people had entertained, in consequence of their repeated solicitations; contrary to their liberties as British subjects; and in no respect resembling the colonial government of any other province belonging to the empire.

This act of parliament entirely revoked and made void, the whole system of laws, by which the province had been regulated from the establishment of the civil government, as well those supposed to be introduced by his Majesty's proclamation of October 1763, as all the acts and ordinances made by the Governor and Council during that period; and established another system, or code of laws, no otherwise defined in the act, than generally "the laws and customs of Canada."

This

This entire change of the laws was not expected or intended by either the old or the new subjects. The former system certainly required amendment; but a total change would necessarily create great confusion. The evil tendency of the new system imposed by that act, gave great and just cause of alarm to his Majesty's ancient subjects settled in that province; they had been obliged, for ten years, to obey laws, which they considered as illegally ordained; and now, they would be constrained to conform themselves to laws, of which they were totally ignorant: for, we may be allowed to say, a system of laws was, by that act, imposed on a British Province, which were very imperfectly known in England; and the most intelligent among the inhabitants of the Province, had but a very faint idea either of their forms or extent. The first intelligence of the project of that act arrived at Quebec at one and the same time with

with the act itself; so that the people had not an opportunity of bringing forward their objections to the principles of the new system. It was with the utmost surprise they learned, that they were to be deprived of the privileges and liberties of British subjects, and that they alone, of all his Majesty's subjects, were doomed to suffer under the oppressive hand of arbitrary power. The ancient subjects more particularly felt the injury thereby done to them; and, in hopes that the act might be reconsidered, before it began to operate, they, in the autumn of the the same year, 1774, addressed their petitions to his Majesty, and to both Houses of Parliament, praying that it might be repealed. No reform having taken place in consequence of these petitions, they, in April 1778, presented a petition to Lord George Germaine, then Secretary of State for the American department, to the same purpose. Again,
in

in 1783, they forwarded petitions to his Majesty and to both Houses of Parliament, praying for the repeal of that act. And, in 1784, the confusion being then more generally felt, the old and new subjects united together in petitioning his Majesty and both Houses of Parliament for the repeal of that act, and the establishment of a house of assembly. This last petition is now lying on the table of the Honourable the House of Commons; and it is expected to come under their discussion this present session. It is signed by upwards of 2300 of the inhabitants of the province, in which number are all the old, and the most respectable among the new, subjects.

From the foregoing short account of the transactions relating to the province of Quebec, since it was ceded to Great Britain, it will appear, that the constitution introduced in 1764, as it was then understood, though founded on the English laws,
produced

produced great confusion, particularly in all affairs relating to landed property, or real estates, (as the English laws did not apply to the feudal tenures of the country,) and thereby occasioned much uneasiness of mind among the people, because they were not allowed to participate in the legislature by their representatives, whose interest and duty it would have been to soften, reconcile, and assimilate the laws of the conquerors and conquered, so as to produce harmony and security. That the constitution, as settled by the Quebec Act in 1774, besides depriving the people of that most essential privilege, imposed on the province a system of laws very imperfectly known; and that the people had constantly and steadily prayed for relief, and for a proper colonial government, such as his Majesty's subjects enjoyed in all other the colonies and provinces of the empire.

Whatever

Whatever may have been the reasons which induced government, in the year 1774, when the Quebec Act was passed, to withhold the full participation of the privileges of British subjects; as the Canadians are now generally convinced of the superior mildness, security, and advantages of a British constitution; and his Majesty's antient subjects, in that province, are now, as a body, become respectable, compared either in regard to their number, their wealth, the landed property they possess, or their general influence, we presume no sufficient reasons can now be given for continuing an arbitrary system in that country. It has already prevailed too long for the interest of the British empire; as we hope we shall be able to shew, that it has been the cause of much oppression to the people; that it has impeded cultivation and population; has greatly depressed the trade and commerce of that province; and has, in its

C consequences,

consequences, been very injurious to Great Britain.

The Quebec Act established a Governor and Council as the legislature of the province; this council to consist of not more than twenty-three, or less than seventeen members; a majority of the whole council, when legally assembled, might proceed to the business of legislating. In consequence of this clause, it has been determined by the council, that nine members (being the majority of seventeen, the smallest number limited by the act of parliament) may legislate; and of course, as every thing is carried in the council by a majority of votes, the acts of five councillors may legally bind the whole province. The Governor is commissioned by his Majesty, and the councillors being recommended by the Governor, are appointed by the King's mandamus. They may be suspended by the Governor, and removed at his Majesty's pleasure. No qualification

qualification is required of the members of that council, except residence in the province; they may be men entirely unconnected with, and ignorant of, the various interests of that extended province and its numerous dependencies. Such is the legislature established by the Quebec Act; and we will venture to assert that no country or nation can produce a system which, in its constitution, is more arbitrary or despotic*. Had the Governor been solely invested with the legislative, as he is with the executive powers, as he would have been accountable to the King, to the nation, and, in some measure, to the inhabitants of the province, for the propriety and necessity of his legislative acts, these would have served as checks to restrain him, from any glaring

* The political liberty of the subject is a tranquility of mind arising from the opinion each person has of his safety. In order to have this liberty, it is necessary the government should be so constituted, as that one man need not be afraid of another.

abuse of those powers; but under the system of legislation established by the Quebec Act, all idea of responsibility is removed; it is the Council that legislates; and as the members of it are, from its constitution, absolutely dependent for their seats at that board, and have each a pension or salary as Councillor, a Governor may, through them, oppress with impunity*. There is no incentive

* List of the present legislative Council of the Province of Quebec

	£.		£.
Henry Hope	100	And as Lieut. Governor	
			1,500
William Smith	100	Chief Justice	1,200
Hugh Finlay	100	Post-Master General	250
Thomas Dunn	100	Judge of the Common Pleas	500
Edward Harrison	100		
John Collins	100	Deputy Surveyor General	100
Adam Mabane	100	Judge of the Common Pleas	500
J. G. C. Delery	100	And pension	200
George Pownall	100	Secretary of the Province	400
			Picoté

centive to engage the members of that Council to seek after information, with a view to the good of the community. The welfare of the people, their ease, their comfort or happiness, must be only secondary considerations under such a constitution. The public has no right to expect any great

	£.		£.
Picoté de Belletre	100	Surveyor of the roads	100
John Frazer -	100	Judge of the Common Pleas -	500
Henry Caldwell -	100	Late Deputy Receiver General.	
William Grant -	100	Late Deputy Receiver General.	
Paul Roc St. Ours	100		
François Baby -	100	Lieut. Col. Militia.	
Joseph de Longueuil	100	Half-pay Captain.	
Samuel Holland -	100	Surveyor General	300
George Davison -	100	Late Deputy Receiver General.	
Sir John Johnston, Bart.	100	Superintendent of Indian affairs.	
Charles de Lanaudiere	100	Superintendent General of roads -	500
R. A. Boucherville	100	Surveyor of roads -	100
Le Compte Dupré	100	Colonel of militia.	
One vacant.			

degree of patriotic exertions from a body constitutionally so dependant*. It cannot be expected, that the members of that body, from their situations, (few of them being concerned in commercial pursuits) should be sensible of all the inconveniencies which the present system imposes on trade and industry; or that they can, in any great degree,

* George Allsopp, Esq. was suspended in January 1783, for having entered a protest, in March 1780, against some proceedings then had in the Council, as will appear by the following copy of the letter of suspension, viz.

S I R,

Council Office, 9th Jan. 1783.

I am ordered by his Excellency the Governor to acquaint you, that his Excellency having resumed the consideration of the protest made by you on the 6th of March 1780, and of the minutes of the Legislative Council subsequent to it, has thought proper to suspend you from your seat in the Legislative Council, until his Majesty's pleasure be known.

I have the honor to be,

S I R,

Your most obedient humble servant,

(Signed) J. WILLIAMS, Clerk of the Council.

The Honorable George Allsopp, Esq.

N. B. Mr. Allsopp was, some time afterwards, removed from his seat at that board.

feel,

feel, as their fellow subjects, those alarming apprehensions for the security of their property, which uncertain or unknown laws must ever occasion. The laws and ordinances that have been enacted by the legislative council, are loudly complained of by the people, as being obscurely worded, and made without sufficient knowledge of the subject; and public objects, as may naturally be expected under such a system of government, have been generally neglected. There is not a decent court house in the province. The jails are small, inconvenient, and in a ruinous condition, very hurtful to the health of the prisoners, and a nuisance to the public*; and as the sheriffs are not accountable for escapes, the public have no certain remedy in cases of fraud. There has not even been a Protestant church erected in the province.

* See Appendix, No. IV.

Will any one say, that the people are not justified in complaining of a system of government so oppressive and so miserably defective, under which their dearest and most sacred rights are withheld ; and their property is the sport of laws which they cannot comprehend ? Do those patriotic members of the community deserve to be branded with the invidious name of factious, who have come forward to lay before his most gracious Majesty and Parliament, the abuses and grievances that exist in a British province. We know it must have been the intention of our gracious Sovereign, and of Parliament, in passing the Quebec Act, to promote the happiness and prosperity of the inhabitants of that province : it is therefore the duty of every good subject to point out the causes, why those gracious intentions have not had the desired effect ; and to propose, for the consideration of government, such measures as may appear most

most likely to attain and secure these desirable objects.

The province of Quebec, from its immense extent, and the manner in which it is settled, would require an intelligent legislature, invested with all the powers necessary to promote, encourage, and secure, the various kinds of industry and commerce that arise from the fisheries, agriculture, and trade with the savages, for which that country, by its climate and internal navigation, is so particularly well adapted by the bountiful hand of nature*. That extensive country, when ceded to Great Britain at the treaty of peace of 1763, contained no more than 69,000 Christian souls†, though 160 years had then elapsed

* From Cape St. Charles to the Grand Portage, following the course of the waters, is 2250 miles, and from the Grand Portage to the west coast of America 3000 miles.

The settled part of the country extends from Gaspé to Detroit, and is 1200 miles.

† Account taken by Governor Murray in 1765.

from

from the time the French first began to settle in it. But the French Government had other views than the encouragement of industry or commercial pursuits. The rapid progress which the province has made, during the short period it has been under the British Government, in consequence of the spirit of industry and enterprise which his Majesty's old subjects, who have resorted to and settled therein, have raised up and encouraged among the inhabitants, will clearly demonstrate to the British nation, the growing importance of that province. From an account taken by Governor Haldimand, in 1784, we can with confidence assert, that the population of that country consists now of at least 150,000 Christian souls, of whom about 28,000 are of his Majesty's ancient subjects who have resorted to that country, and their descendants. The cultivation of the lands and the objects of Commerce have likewise, during
that

that period, surprisngly encreased and been multiplied. While under the French Government, the province barely supplied itself with provisions, even in the most plentiful years, and furnished, for exportation, scarcely any thing except a few furs, and sometimes a few casks of oil, the whole not producing in any one year, more than *forty or fifty thousand pounds*; whereas the annual exports from the province may now be fairly estimated to produce nearly *four hundred thousand pounds**; and in a few years must greatly exceed that sum; and this is all in payment of British manufactures. The extensive settlements which the loyal Americans have formed, since the year 1784, in the upper parts of the province, though the lands are extremely fertile, have not as yet furnished any thing for exportation.

* See Appendix, No. 5. Particular Account of Exports last year.

Besides

Besides, the whole trade of those extensive fertile countries, which border on Lake Champlain, now belonging to the states of New York and Vermont, must, from the natural channel of the water communication being down the river St. Laurence, center in Canada. Immense quantities of wheat, hemp, lumber, and other articles may be expected in a few years from all these countries, which will occasion a vast increase both in quantity and value of the exports from Quebec, and a proportional demand for British manufactures. The whole import and export trade of the province is, at present, in the hands of, and depends on, his Majesty's ancient or natural born subjects, and is entirely carried on in British ships, of which a very considerable number annually arrive with cargoes, and carry away produce*. Such is

* About 150 ships and vessels were loaded in the province in the year 1788.

the province of Quebec a branch of the British empire, though left to struggle with all the difficulties of an arbitrary system of government, it has surprisingly increased, since it was ceded to Great Britain, in population and commercial resources; but this, we affirm, has been entirely owing to the constant hope the people have had of being allowed a free constitution. And there is no doubt but, under a liberal system of government, that would remove the obstacles which the iron hand of arbitrary power has thrown in the way of improvement, which, by wise, permanent, and wholesome laws, would renovate and give vigour to industry, and afford security to mercantile transactions; that province would increase in its resources and produce; would, in a few years, furnish employment for some hundreds of British ships in the carrying trade, and raise up and support for the British

navy.

navy a great number of strong healthy seamen*.

The legislative council in their first session, in Spring 1777, established the courts of justice for the province ; viz.

1st, A court of King's Bench, for the trial of criminal causes only. In this court the chief justice presides alone.

2d. A court of Common Pleas for each of the districts or counties of Quebec and Montreal. Three judges to preside in each of these courts, and two necessary to transact business.

* But now, under proper regulations, this country may be productive of the greatest commercial advantages to Great Britain. The West India Islands, and the East Indies, are the graves of its best seamen; the Northern American navigation and its fisheries are the nurseries of them; and Canada may become the source of an infinite supply to this nation both of men and naval stores. It is an object of great consideration to your Majesty's government, that the returns to Great Britain are all made in raw materials to be manufactured here; and that a considerable duty arises on the export. Dr. Marriot. Page 47:

3d. A

3d. A Court of Probates for testamentary affairs and succession.

4th. They constituted themselves, viz. "the whole Legislative Council," to be a Court of Appeals; and that any five of them, with the governor, lieutenant governor, or chief justice, should be competent to proceed to trial and judgment of all causes brought before them in appeal.

From the above establishment it will appear, that there is only one court of original jurisdiction for the trial of civil causes, viz. the Court of Common Pleas. The judges, who have presided in these courts, have seldom been men brought up to the study of the law, or who could be supposed properly acquainted with the rules or practices of courts of law or equity*. We have already said, that the "laws and customs of Canada," as established in the province

* Appendix, No. 6.

of Quebec, by the act of the 14th year of his present Majesty, were very imperfectly known at that time, either in Great Britain or Canada. They have been generally understood, however, to consist of

The Custom of the *Prevôté de Paris*.

Such of the French King's edicts and ordinances as were registered in the superior council of the province.

The Regulations and Ordinances of the Intendants.

The Local Customs of the country.

And (though on what authority we do not know) the Roman Code, or Civil Law.

Under this definition, these laws will appear sufficiently extensive and complex, to require years of intense study to understand them properly; and the acts passed by the legislative council, have greatly added to that difficulty. This has occasioned great uncertainty in the decisions of the courts; more particularly, as the judges,
not

not contented with such an extensive field, have sometimes resorted to the English law, and even to equity, as the rule to govern their judgments; so that it has not been possible for the subject to know by what law, or on what principles, his cause has been decided. The people have steadily and loudly complained of the numerous grievances introduced by the operation of the Quebec Act; and they have, at different times, stated the difficulties they laboured under in a very forcible manner.

In a petition to Lord George Germaine, dated in April 1778, these grievances are strongly set forth*.

In a petition to his Majesty, dated in September 1784, from the Canadian new subjects, the acts and ordinances of the legislative council are complained of in express terms; and, what is more singular,

* See Appendix, No. VII.

this petition is signed by some members of that legislative body*.

In petitions to his Majesty, and both Houses of Parliament, dated in Sept. 1783, the old subjects stated the grievances they laboured under in a very pointed manner; and in the petitions to his Majesty, and both Houses of Parliament, dated the 24th of November 1784, now under the consideration of the honourable the House of Commons, these grievances are exposed in the strongest language. They therein pray, that they may be relieved from the “ anarchy
“ and confusion which prevail in the laws
“ and courts of justice of the province, by
“ which their real property is rendered insecure; trade is clogged; and that good
“ faith, which ought to, and would, subsist
“ among the people, and which is the life
“ and support of commerce, is totally destroyed.”

* See Appendix, No. VIII.

The Merchants of London, trading to the province, in a memorial they presented to Lord Sydney, dated in January 1786, have likewise stated, in the most pointed manner, the general confusion which prevails in that province*.

Lord Dorchester was appointed Governor of that province in 1786, and arrived at Quebec late in the month of October of that year. His Lordship had, no doubt, been informed of the distracted situation of the civil government of the province; for soon after his arrival, he assembled the Legislative Council, and having formed the members into different committees, he directed them to enquire into the state of the laws, the commerce, the police, &c. of the province, and to report to him, each committee respectively, on the subject referred to it. This was a very wise measure, and shewed that his Lordship was resolved to find

* See Appendix, No. IX.

out the source of the dissatisfaction which so universally prevailed. The Committee, appointed to report on the state of the commerce, applied by letter to the merchants of Quebec and Montreal, "in order (as they state in their report to his Lordship) to obtain the thoughts of others more experienced than themselves, on objects of such extensive concern to the welfare of the province." In consequence of this application, the mercantile body of these two cities, having consulted together, and, after mature deliberation, made out, each, a report on a variety of objects relating to the state of the commerce, the laws and police of the country, they presented them to the Committee of the Legislative Council in January 1787. The confusion of the laws, and the great uncertainty of all legal proceedings, are pointedly and expressly stated therein. These reports were highly approved of by the Committee of the Legislative

gislative Council, and by them recommended in the strongest terms to Lord Dorchester's most serious consideration and reflection*.

In the spring session of the Legislative Council of that year, 1787, *Mr. Chief Justice Smith* brought into the Council, a bill to continue an ordinance that had been passed in 1785, for two years only, establishing the trial by jury, in all commercial affairs, "between merchant and merchant, "and trader and trader, so reputed and "understood according to law; and also, "of personal wrongs proper to be compensated in damages;" and his Honor added to the bill certain clauses, which, he apprehended, would operate as a cure of some of the disorders that had so long prevailed in the courts. This bill, notwithstanding the trial by jury intended by it was, so extremely limited, unfortunately for

* See Appendix, No. XI.

the province, was rejected by the Council. The members who had supported it, with a view of providing a remedy for some of the many evils of the present system, finding their laudable intentions for the public good thus frustrated, thought it expedient, for their own justification, to enter their protest against the rejection of the bill on the Journals of the Council. Their reasons of dissent, as stated in that protest, effectually support all the complaints of the people; and from the respectable situations which those gentlemen, who signed it, hold under government, furnish strong proofs of the necessity of a reform *. The party who had opposed, and ultimately rejected the Chief Justice's bill, soon afterwards brought forward, in the Legislative Council, another bill in its place. In this new bill, though the name of jury was retained, yet the advantages which the subject derives from

* See Appendix, No. XII.

that

that glorious institution, would have been totally destroyed. The reports of the tendency of this new bill alarmed the merchants; and in a meeting held for the purpose of deliberating on what steps were proper and necessary for them to take, on an affair of so much importance to their security, they determined to petition the Council, praying to be heard against the bill, before it was passed into a law. They accordingly drew up a petition to that purpose, and having presented it on the 6th of April, the Council appointed the 14th of that month for hearing the argument. On that day the counsel for the commerce appeared at the bar of the Legislative Council; and in a speech which lasted six hours, he pointed out in a very clear and satisfactory manner, the evil tendency of the bill then before the legislature; he shewed the necessity of ascertaining what laws were established for the province by the

Quebec Act, that the subject might have some certain rule to regulate his affairs with security ; and pointed out the propriety of restraining the judges to more fixed and determinate principles and rules of conduct, with regard to the practice of the courts, and to the laws and maxims which ought to govern them in their decisions. In support of the arguments he had used for that purpose, he cited a number of cases from the records, and shewed the inconsistency of the courts in their judgments so clearly, that it astonished the whole audience. By order of the Legislative Council, he, some days afterwards, laid upon their table two states of facts from the committee of merchants, containing the substance of the charges made against the proceedings in the courts, in his speech on the 14th of April *. These papers had the desired effect ; the bill was

* See Appendix, No. XIII.

dropped ;

dropped ; but as so many serious charges had, on that day, (the 14th of April) been publicly made against the proceedings of all the courts of the province, the Legislative Council, considering the honor of Government as interested in the due administration of justice, thought proper to address Lord Dorchester, the Governor, thereon *.

* The Address of his Majesty's Legislative Council.

May it please your Lordship,

The extracts from the minutes of our Journals, which accompany this address, will shew to your Excellency the reasons and grounds which have engaged the Legislative Council, humbly to request that your Lordship will take such steps, as your Lordship, in your wisdom, shall judge best calculated to promote the ends of public justice, and to vindicate the honor of government, which are both so essentially interested in an enquiry into the charges and accusations, so publicly brought before the Legislative Council, against the past administration of justice, in the Courts of Common Pleas for the two districts, as well as against the judges of the same ; and that of inconsistency in some of the judgments of the court of appeals,

Council Chamber, April 27, 1787.

(Signed) HENRY HOPE, President.

In

In consequence of that address, and the papers which accompanied it, his Excellency, *from that regard to public justice which has always distinguished his Lordship*, was pleased, in a council of state held in his presence on the 18th of May 1787, to order the chief justice to institute a public investigation into the past administration of justice in the province.

We thought it necessary to state particularly the various transactions which preceded and gave birth to the order for an investigation, or enquiry, into the past administration of justice in the province of Quebec; as the evidence which was brought forward before the chief justice on that occasion, by a number of the most respectable men in that country, upon oath, many of them gentlemen high in rank, and holding places of great trust and confidence under Government, has exposed to public view such a scene of anarchy and confusion in
the

the laws, and in the administration of them by the courts, as no other British province ever before laboured under. The minutes and proceedings of that investigation were transmitted by Lord Dorchester to the King's ministers, in the autumn of the same year, 1787; and we cannot doubt but these papers, from their great importance, have been laid before the crown lawyers. They are too voluminous to admit of publication; we shall, therefore, only take a cursory view of the various matter that is contained in that investigation, and notice a few of the many striking parts of the evidence therein adduced. But we flatter ourselves, that those parts will be sufficient to convince the British nation, of the urgent necessity of a reform of the constitution of that province; of the great cruelty exercised towards the inhabitants thereof, in having kept them so long under such a defective system of laws and government; and of the impolicy of supporting

supporting arbitrary power in a province, now the largest and most populous belonging to, and dependent on, the imperial crown of these kingdoms.

The chief justice, as commissioner, opened the investigation in the beginning of June of the same year, 1787, and three members of the legislative council, who are likewise judges in the Court of Appeals, were examined; viz. *the Honourable William Grant, the Honourable Hugh Finlay, and the Honourable George Pownal, Esquires.* Their evidence shews particularly the confusion that has prevailed in the court of which they are members; and the impossibility of finding consistency in a court composed of so many judges. They likewise speak to the inconsistency of the Courts of Common Pleas. They state, that English judges follow English law; French judges follow French law; and that some of them follow no particular law, but decide according to what

what appears to them to be the equity of the case*. This is a most melancholy picture of courts of justice. Is it possible for a people to be more seriously oppressed, than to be obliged to depend, for the security of their property, on courts composed of judges who differ so materially on the principles which ought to govern their judgments in deciding the causes brought before them? The suitor's fortune, nay, his political existence in the society, must depend on the chance of an accidental majority of judges on the bench ; of those who decide by French law ; of those who decide by English law ; or of those who, neglecting all law, decide by their own ideas of natural equity. The Quebec Act is express in its direction, that all civil actions shall be decided by the laws and customs of Canada ; yet the Court of Appeals decides by

* See Appendix, No. XIV.

the English law. The judges of the Court of Appeals form, in their legislative capacity, the whole legislature of the province; they consider themselves as bound in conscience, in their judicial capacity, to decide causes brought before them according to the rules and maxims of the English law, with a view, as it is said, to do substantial justice; though that law perhaps was not in the contemplation of either of the parties at the time of the transaction; yet they do not, as legislators, introduce that law into the constitution of the country. They, at other times, decide on what appears to be the equity of the case; though, as a court, they have no equitable jurisdiction or powers. But, it is said, the judges of the courts have not been professional men: however that may operate as an excuse for the judges, it is an object of very serious complaint. If the people had enjoyed their
right

right of representation, this grievance could not have long existed.

Such is the substance of the evidence of these gentlemen. As they are high in rank, and men of the first abilities in the province, their evidence furnishes matter of serious import for the consideration of Government, and proves sufficiently that the complaints of the people are well founded.

From the exertions of those gentlemen in the legislative council, as they appear so fully sensible of the defects in the laws and in the constitution of the courts, the public had reason to expect some reforms would be brought forward ; but as no effectual remedy has been applied during fourteen years since the Quebec Act began to operate, we may be allowed to say, the system is of such a nature, that the legislature, as it is now constituted, cannot do what would be necessary for these purposes.

We

We will now proceed to the evidence given by *the advocates and lawyers* who conduct the causes in the courts; whose whole business is the study of the law, and the rules of practice in those courts. From them we may expect more pointed and legal information.

Thomas Walker, and Robert Russel, Esqrs. advocates and practitioners at the bar at Quebec,—and *James Walker, Arthur Davidson, and William Dummer Powell, Esqrs.* advocates and practitioners at the bar in Montreal, were examined. The evidence given by these gentlemen is very full, and extends to a great variety of objects relative to the conduct of the courts. They all agree in declaring, that the judgments of the courts are uncertain and arbitrary; founded, sometimes on the *Coutume de Paris*, sometimes on the Code Marchand, sometimes on the Roman Code, and sometimes

on

on the English law; that the judges have often set aside all law, and decided the causes before them according to their own vague unsettled ideas of natural equity; that, the confusion created by this variety and mixture of laws was so great, they could not often find out what principles had governed the courts in forming their judgments; that there were no fixed or permanent rules of practice in the courts; that, finding the courts so extremely variable in their proceedings, they (the advocates) had, therefore, as they conceived it would apply to their ease, cited French law, English law, Roman law, and cases in equity; in short, every law or thing which they apprehended would, in any manner, impress the minds of the judges in favour of their clients; that, from such great uncertainty and versatility in the judgments of the courts, they had found it impossible to give any clear or satisfactory advice on the

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cases

cases submitted for their opinions; and though they could have said what law should govern a particular case, they could not advise what law the court might think proper to adopt in giving its decision.— Each of these gentlemen has cited in his evidence a number of cases in support of these assertions, and contrasted them to shew the inconsistency of the judgments*. These gentlemen are among the first characters at the bar in that province; it is their business and their duty to examine with great care and attention the cases put into their hands; and from great study, long practice, and much experience, we must suppose they understand how the law ought to have been applied to the causes they have conducted. Their evidence is conclusive, and fully ascertains the confusion that exists in the laws, and the great

* See Appendix, No. XV.

uncertainty and anarchy that prevail in the courts.

In addition to the evidence of these judges and advocates, *the whole mercantile body* of the cities of Quebec and Montreal came forward and gave their testimony before the commissioner to the same purpose. They spoke feelingly ; as mercantile transactions, from their nature and variety, are subject to much litigation, experience had unfortunately taught them, by the ruin of their fortunes, and perplexity of their affairs, by the uncertainty introduced into their transactions, and by the uneasiness of mind which they endured from the dread of litigation, the fatal consequences of arbitrary proceedings in courts of law. Many of the merchants, on that occasion, cited cases in which they had been interested, in support of the evidence they then gave. They have all declared, that they could get no clear legal advice on their affairs,

and that they had heard all the lawyers complain of the uncertainty of the laws and of the courts. Some of them had suffered so much from these causes that they declare they are now afraid of being obliged to go into court, in any manner, either as plaintiffs or defendants*.

We have attempted, by this short sketch, to give the substance of the evidence laid before the chief justice on that investigation. From the number of persons examined, the variety of objects which these examinations comprehend, and the great number of cases cited in the evidence to shew the wrong application of the law, or the contrariety of judgments in similar cases, the minutes of the enquiry would fill several volumes. On that account, we have been obliged to confine ourselves to the few extracts in the Appendix. His Majesty's

* Appendix, No. XVI.

ministers have long been in possession of the whole proceedings and evidence, and we presume they are now convinced, that the laws, as established by the Quebec Act for that province, are neither well understood, nor properly administered. A judgment of the Court of Appeals of the 21st of February 1788, (three months after the investigation was closed,) is a further confirmation of the uncertainty of the laws in that country; as it states and proves, that (not a single law, but) a *whole code* of the French law, called the *Code Marchand*, has been sometimes admitted, and sometimes denied to be law, by all the courts in the province; and the Court of Appeals has in that judgment declared, that it never was a part of, or belonging to, the law of that country*.

Notwithstanding this solemn decision of the Superior Court, we are assured that

* See Appendix, No. XVII.

the Courts of Common Pleas still persist in judging mercantile cases by the *Code Marchand*. This encourages litigation, and occasions numerous appeals; as the party that loses in the Common Pleas, is sure to gain in the Superior Court*. So great is the uncertainty of law and justice in that province, that his Majesty's subjects instead of being relieved or protected by the courts, have been harassed and vexed by troublesome and unnecessary suits; and, what is of infinite consequence to society, good faith in transactions and the moral principles of the people, as the natural consequence of an uncertain administration of law, are greatly weakened†.

* Of thirty causes, carried by appeal before the council, from the Common Pleas, during the last twelvemonths, we have been assured that twenty-five of the judgments have been reversed.

† "That laws, in a certain degree, can change the manners of a people, is not to be doubted; because their manners alter with the increase and circulation of property, on which laws have a visible influence." Dr. Marriot's Report to the King in 1773. Page 4.

The

The great uncertainty of law in the courts, holds out encouragement to undertake or defend any and every thing, in hopes that chance may incline the court to favour the cause*. It is become extremely necessary that Government should interpose and stop the progress of these alarming evils; for a people once freed from the obligations of moral principles, will never be good or loyal subjects.

It is those principles alone that render society desirable or happy; there are no other ties among men; and all wise states

* Among all civilized nations, it has been the constant endeavour to remove every thing arbitrary or partial from the decision of property, and to fix the sentence of judges by such general views and considerations as may be equal to every member of the society; for, besides, that nothing could be more dangerous than to accustom the bench, even in the smallest instance, to regard private friendship or enmity, 'tis certain that men, when they imagine that there was no other reason for the preference of their adversary but personal favour, are apt to entertain the strongest jealousy, and ill will against the judges and magistrates.—Hume's Enquiry.

and legislatures have accordingly, with anxious care, watched over them; and strongly cherished and inculcated them.

The province being in this unfortunate situation, will any one presume now to say, that the complaints the people have sent forth, are the offspring of faction? Have not all their petitions been conceived in decent and respectful, though, from the urgency of their situation, in nervous language; and constantly pointing to one thing, —a reform of the constitution? And have they not, by waiting under the pressure of such accumulated distress for the convenience of Government to bring forward that reform, shewn a degree of patience that bespeaks them a dutiful and loyal people? The system of civil government, or constitution, established by the Quebec Act, has had a fair trial of fourteen years; and the foregoing pages will shew, that the affairs of the province are now in a much more

more confused situation than they were at the time that Act was passed. Dr. Marriot foresaw and predicted, in his report to his Majesty in 1773, the consequences that would arise from hasty measures in settling the constitution of that country*.

For the first ten years after the Quebec Act was passed, the members who composed the legislative body considered themselves bound by their oath of office, not to disclose or make public any matter brought before, or agitated in, the legislature†. All hopes of wisdom in the acts or ordinances by them enacted, were by this strange opinion completely destroyed; for how could they make good and wholesome laws with-

* This latitude (alluding to his Majesty's reference to the law officers being general) is the more necessary, because, if hasty and ill digested regulations should be adopted upon any mistaken notions of men and things, the evils already felt by your Majesty's Government will encrease beyond the power of remedy. Page 47.

† See Appendix, No. VII.

out information? and how was it possible for them to procure the necessary and full information, if they dared not disclose the objects on which they wished to be informed?

The Chamber of the Legislative Council of Quebec was as close and impervious as the Divan at Constantinople*. And though the members do not now consider themselves obliged to conceal what passes in the Legislature; yet the public, as the door of the Council Chamber is still shut against them, can only learn through the imperfect medium of common rumour, what laws or acts are at any time agitated in the Legislature.

* Legislative Council, February 14, 1780. Motion by Mr. Grant—"Whether a Member of Council, acting
 " in his legislative capacity, may not take a copy of such
 " papers as are laid before the Board by his Excellency the
 " Governor, or any other person, in order deliberately, in
 " his cabinet, to instruct his mind, and form his opinion of
 " the matter committed to him." Voted, and resolved in
 the negative.

From

From the establishment of civil government until last year, the province was divided into two great districts, or counties, namely, the district of Quebec, and the district of Montreal. The settlement of a great number of loyalists, at the extremities of the province, since the year 1784, rendered these districts too extended and unwieldy. To remedy the inconvenience occasioned by the great distance of some of these new settlers from the seats of justice, and on purpose to encourage these settlements, his Excellency Lord Dorchester, in consequence of an ordinance of the Legislative Council of the 30th of April 1787, authorising him to that effect, did, by proclamation, bearing date the 24th of July 1788, constitute and erect, from and out of the two districts of Quebec and Montreal, five new districts, viz.

The district of Gaspé, in the Gulph of St. Laurence, taken off the district of Quebec.

The

The district of Lunenburg, above Montreal, taken off the west end of that district.

The district of Mecklenburgh, to the west of Lunenburg.

The district of Nassau, to the west of Mecklenburgh. This district includes the settlement opposite Niagara.

The district of Hesse, to the west of Nassau. This district includes the settlements about Detroit, and all the lands west of Niagara to the Pacific Ocean ;

And his Lordship constituted a Court of Common Pleas, and named and appointed judges, justices of the peace, and other necessary officers, for each of these new districts ; but unfortunately for the people who inhabit them, neither they, nor the judges appointed to preside in the courts of law, have any knowledge of the laws of the province. The laws of France which, by the Quebec Act, are declared to be the laws of the province, are all written and published

lished in the language of that kingdom ; but the settlers in these new districts are totally unacquainted with that language. The natural consequence of this peculiar situation is, that in those districts where the new appointed judges have opened and held courts, they have decided all the causes brought before them, according to the principles of the English law, in direct contradiction to the Quebec Act, which enacts, that " in all matters of controversy relative " to property, or civil rights, resort shall be " had to the laws and customs of Canada, " for the decision of the same."

The judges who were appointed for the districts of Gaspé and Hesse, sensible of their incapacity and inability to dispense justice according to the laws and constitution of the province, modestly declined his Lordship's commissions. These two districts therefore remain without any law. The mercantile transactions, in these two districts,

tracts, exceed 350,000l. annually ; and there is not a court in either of them to compel a fraudulent debtor, to do what is just. In short, the whole province is without any certain law ; and is therefore in the very worst state of civil society.

We have, in the preceding pages, attempted to delineate the principal features of the systems of government under which the province of Quebec has been held, unfortunately for its inhabitants and for the empire at large, since it was ceded to Great Britain in 1763 ; by which its population has been impeded ; the progress of agriculture retarded ; the valuable fisheries on its coasts much neglected ; its general commerce greatly oppressed ; and the civil and political liberty of the people absolutely destroyed.

It seems to be a general maxim in the politics of all nations, that the same principles of government ought to extend to, and pervade

pervade all the dependencies of an empire; and though it may be necessary for the general good, to restrain in certain cases, the actions of certain classes, or of certain districts or provinces; yet that such restrictions ought in no wise to injure, even with regard to such district or province, the general governing principles of the empire.

The different provinces and colonies of France are all governed by the same principles; by a Lieutenant General or Governor, an Intendant and Parliament; (which, in the colonies, is called a *conseil superieur*) though almost every province of France has different laws, customs, and usages. Every kingdom therefore being uniform in the principles of government through all its dependencies, it will follow of course, that the inhabitants of any district or province from whom these general principles are withheld, will consider themselves as more injured and oppressed than their fellow-subjects,

subjects; which will tend to lessen that confidence in, and respect for, the governing powers, which are so necessary to give energy and vigor to government. It has been asserted, that distant provinces ought not to have so much general liberty as the parent state*; this we suppose, however, can only mean with regard to their commerce or manufactures; but if it is meant, that all foreign dependencies ought to be governed by arbitrary,* or despotic systems, we will venture to assert, that from the nature of the British Constitution, such a system cannot long exist in any of her dependencies; or produce any real advantage to the empire: for, as it is not the practice, or policy of the British government, to keep large standing armies in the provinces, it is on that account, more necessary, by a liberal

* It is well known, that the inhabitants of the French colonies enjoy a much greater degree of liberty than their fellow-subjects living in France.

constitution and mild administration, to secure the affections and confidence of the inhabitants; and by that means interest them in the support of government and defence of their province; for nothing can give strength and energy to the government of a distant province, but the confidence of the people. But if the people consider themselves deprived of privileges they think they have a right to enjoy, that confidence must be weakened. It shews a great want of generosity and equity in those, who, themselves enjoying all the advantages which flow from a free constitution, can, notwithstanding, propose an arbitrary system of government for their fellow subjects: but, perhaps, living in a free country, and protected by equal and permanent laws, they are ignorant of the great oppression and injustice that prevail under arbitrary systems; they, perhaps, do not know, that few instances of oppression committed in a dis-

tant province, ever are, or can be brought forward to the public view in the governing country, on account of the inability of the sufferers to bear the expence of following the great delinquent, and the little hopes they can entertain of succeeding in their complaints against him. It is certainly an object of great importance to the safety and strength of every government, to conciliate the minds and affections of the inhabitants of a newly-acquired or conquered province to the change of their government and allegiance; and this surely, under the British empire, cannot be effectuated in a more certain or easy manner, than by allowing them the full enjoyment of the privileges of British subjects, and thereby making them sensible of the great advantages they have gained. We have seen in the conduct of the inhabitants of the Island of Minorca, the fatal consequences of not attending to this maxim. That island was subject to the
British

British government near eighty years ; but as no care appears to have been taken to change the language or manners of the people ; as they had not been allowed to participate in the privileges of British subjects, they never perceived any peculiar advantages they enjoyed as subjects of the British empire ; and therefore in 1756 and 1780, when that island was attacked, scarcely any of them stood forth in defence of the British government. Such are the wretched effects of arbitrary government, that eighty years could not secure the confidence of the people, and interest them as subjects in the national honor, welfare and prosperity !

Although the inhabitants of the province of Quebec have, from the general tendency of the British government to a mild administration, enjoyed a certain degree of civil liberty ; yet they have been, from the peculiar nature of the system of their government,

ment, entirely deprived of all political liberty*. A more full enjoyment of these essential privileges has been the constant prayer of all their petitions; and particularly of those now before the House of Commons. The objects prayed for in their petitions, may be reduced to the following heads:

* In countries where every member of the society enjoys an equal power of arriving at the supreme offices, and consequently of directing the strength and sentiments of the whole community, there is a state of the most perfect political liberty. On the other hand, in countries where a man is, by his birth or fortune, excluded from these offices, or from a power of voting for proper persons to fill them, that man, whatever be the form of the government, or whatever the civil liberty, or power over his own actions he may have, has no share in the government, and therefore has no political liberty.—*Priestly on Government*, page 15. And again, page 54. If all the political power of this country was lodged in the hands of one person, and the government thereby changed into an absolute government, the people would find no difference, provided the same laws and the same administration, which now subsist, were continued: but then the people, having no political liberty, would have no security for the continuance of the same laws and the same administration..

1st. An elective House of Assembly, or representatives of the people.

2d. That the Members of the Legislative Council receive no salaries as councillors.

3d. That the Habeas Corpus act, and the other laws of England relating to personal liberty, be made a part of the constitution.

4th. That trial by jury in civil causes be likewise made part of the constitution ; and that nine out of twelve may return a verdict.

5th. That the antient laws and customs of Canada, relating to landed property, marriage settlements, inheritance and dower, be continued in force in the districts or counties of Quebec and Montreal, as they are at present bounded : as these two districts contain almost the whole of the lands granted on feudal tenures, and inhabited by French Canadians.

6th. That the English laws be established generally in the new counties, or districts of

Gaspé, Lunenburg, Mecklenburgh, Nassau, and Hesse ; as these districts are almost entirely inhabited by his Majesty's ancient or natural born subjects.

7th. That the laws of England, relating to commercial affairs, be established for the whole country.

8th. That the criminal laws of England be continued as at present in force in that province.

These are the principal heads of these petitions ; and we hope it will not be said, that there is any thing unreasonable or improper, any thing factious or that may be deemed party work, in praying for the establishment of a government so nearly resembling those of all the other dependencies of the empire.

The political and relative situation of that province has undergone a great alteration, since the Quebec Act was passed. A very great number of his Majesty's ancient or
natural

natural born subjects have established themselves in the province since that period ; a more extended commerce has occasioned a greater communication, and formed more intimate connections between the ancient subjects and the French Canadians ; and the more enlightened among the latter have now, in a great measure, adopted the mode of thinking of the ancient subjects with respect to civil government. The internal regulations for the province since the treaty of peace of 1783 are become of much greater importance to the colony and to the empire. In short, if we were to admit that the Quebec Act was proper in the year 1774, we may nevertheless now assert with confidence that it is repugnant to the interests of the province, and dangerous to the safety of the empire. We have already said, and we repeat it, that the Legislative Council, as established by the Quebec Act, has not the power and cannot be supposed

to contain the knowledge necessary for the legislature of such an extended province; and, that the arbitrary system of government which has so long prevailed has greatly retarded the progress and improvement of that country: but this has ever been the consequence of oppression*.

The petitions now before the House of Commons are signed by all the old subjects, and, by a very numerous body of the most respectable among the new or French Canadians, in the districts of Quebec and Montreal. That some opposition should appear against the reforms prayed for in these petitions cannot be considered as extraordi-

* I conceive that no laws in the detail, can be well formed for any country, but by a legislative body upon the spot; because such a body best knows its own wants, and how to find the means, and how to apply them. The colonies of Georgia and Nova Scotia were long drooping under a military government; the extraordinary improvements of them, from the moment they have been permitted to make laws for themselves, is a conclusive argument.—
Dr. Marriot's Report, page 34.

nary ; private interest, or selfish views, have often prevented the wisest and most advantageous reforms. Unanimity of sentiment in a nation is a thing not known in history ; What country was ever unanimous on any one point or principle ?

To prevent, in some measure, the pernicious effects of false reports on the objects of the reforms prayed for, and, for the information of the public in general, the Committees named and appointed to carry forward and support these petitions published them, with a few remarks on the several clauses thereof, in the French language and distributed them all over the province*.

Those who have taken the lead in the pretended opposition to the reforms prayed for in these petitions are principally of that class of the people who call themselves gentry ; but we flatter ourselves that their representations will not have much influence

* See Appendix, No. XIX.

with the British legislature†; more particularly as they are confused and contradictory. It is evident they must have been greatly embarrassed in framing their memorials, to save appearances with the public; for, though they have declared that they are against the reforms, they have at the same time prayed for the enjoyment of all the objects of these reforms in a very pointed manner.

In a petition to his Majesty, dated in August 1783, they say,—“ Que votre tres
 “ gracieuse Majesté, toujours attentif à pro-
 “ curer le bonheur du peuple soumis à son
 “ empire, voudra bien nous etre favorable,
 “ et nous admettre sans aucune distinction,

† But the Seigneurs and Noblesse by virtue of their fiefs, and the officers and nobles by patent, who have served in the French troops, are, the one too inconsequential, and the other too miserable, in point of property, to merit any distinction by trials, or, in the nature of the punishment. To compare them to British Peers would be to form an argument of ridicule and not of reason. Dr. Marriot's Report, page 64.

“ sours

“ sous quelque forme de gouvernement
 “ qu’il lui plaira d’établir en cette province,
 “ à la précieuse participation des graces,
 “ des droits, des privilèges et des prerogatives,
 “ dont jouissent dans toutes les
 “ parties du globe, tous les fideles sujets
 “ de sa Majesté*.”

In another petition to his Majesty dated
 in December 1784, they say,—“ Le second
 “ objet, tres Gracieux Souverain, étoit, que
 “ sous quelque forme de gouvernement qu’il
 “ plairoit à votre Majesté d’établir en cette
 “ province, vos sujets Canadiens Catho-
 “ liques jouissent indistinctement de tous les
 “ privilèges, immunités et prerogatives dont
 “ les sujets Britanniques jouissent dans

* We request that your most gracious Majesty, who is
 ever inclined to promote the happiness of all the people
 subject to your empire, will favourably hear us, and ad-
 mit us without any distinction, under whatever form of
 government your Majesty may be pleased to establish in
 this province, to a precious participation in all the favours,
 rights, privileges, and prerogatives, which all your Ma-
 jesty’s faithful subjects enjoy in every part of the world.

“ toutes

“ toutes les parties du globe soumises à
 “ votre empire*.”

These are the prayers of this pretended opposition. The petitions now before the House of Commons do not ask for any thing more than the rights and privileges of British subjects. It is evident therefore, that these counter petitions as they are called are only so in name, for they agree in substance with those under the discussion of Parliament. Further, in a petition they addressed to his Majesty, dated the 13th of October last, they say,—“ Nos demandes,
 “ Auguste Monarque, se reduisent à conser-
 “ ver nos Loix municipales, mais qu’ils
 “ foyent strictement observées ; quil y ait

* Our second request, most gracious Sovereign, was, that under whatever kind of government it should please your Majesty to establish in this province, your Canadian Catholic subjects may, without any kind of distinction, enjoy all the privileges, immunities, and prerogatives which British subjects enjoy in every part of the world under your Majesty's government.

“ dans

“ dans le conseil—legislatif de notre province, un nombre proportionné de vos loyaux sujets Canadiens*.”

The petitions before the House of Commons pray in as strong terms as the above, that the municipal laws of the country, relative to landed property, &c. may be preserved; but these counter petitioners desire to have more Canadians in the legislative council, and that they should be taken, we suppose, from among the gentry. This would, no doubt, greatly add to the wisdom of the legislative council!

A memorial they gave in to Lord Dorchester, dated the 31st of December last, contains the following paragraphs;—“ Notre religion, nos loix de propriété, notre sûreté personnelle, voilà ce qui nous inter-

* Our demands are confined to the preservation of our municipal laws, and that they may be strictly administered; likewise, that there should be in the legislative council a proportionate number of your Majesty's loyal Canadian subjects.

“ esse,

“ esse, et ce dont nous pouvons jouir plus
 “ amplement par le bill de Quebec ; une
 “ chambre d’assemblée nous repugne par
 “ les consequences fatales qui en resul-
 “ teront. Pourrions nous nous flatter de
 “ conserver long temps comme Catholiques
 “ romains les memes prerogatives que les
 “ sujets Protestants dans une assemblée de
 “ representants ? Ne viendrait il point un
 “ témps ou la preponderance de ces derniers
 “ influeroit contre notre posterité* ?” And
 again—“ Nous dirons, my Lord, avec con-
 “ fiance a votre excellence, que l’abrogation
 “ de plusieurs de nos loix, et l’alteration
 “ quant au forme, qui souvent, et trop sou-

* Our religion, our laws relative to property, our per-
 sonal security, these are the objects which interest us, and
 which we can amply enjoy under the Quebec Bill. A
 House of Assembly disgusts us, because of the fatal conse-
 quences which may result from it. Can we flatter our-
 selves to preserve for any length of time as Roman Catho-
 lics, the same prerogatives with the Protestants in a house of
 representatives ? Will not the time come, when the weight
 of these last will operate against our posterity ?

“ vent

“ vent en ont détruit les fonds, trop précipi-
 “ tement faites depuis le bill de Quebec,
 “ nous ont alarmé ; que c’est une des mo-
 “ tifs qui ont engagé les Canadiens à re-
 “ présenter aux pieds du Trône, dans l’in-
 “ tention seulement de remédier à ces incon-
 “ veniens. Voulant éviter de tomber dans
 “ le plus grand malheur, nous osons nous
 “ reposer sur la bienfaisance de votre excel-
 “ lence qui nous a si long temps protégée
 “ et espérer que vous voudrés bien vous in-
 “ téresser auprès de sa très excellente Ma-
 “ jesté et son auguste parlement, pour ob-
 “ tenir la permission de rétablir toutes ab-
 “ rogations précipitées de nos loix, et ar-
 “ rêter toutes alterations ultérieures et fu-
 “ tures*.”

By

* With confidence, my Lord, we will say to your Ex-
 cellency, that the abrogation of several of our laws, and
 the alteration of the forms which often, and too often, has
 destroyed the spirit of them, too precipitately made since the
 Quebec Bill has taken place, has greatly alarmed us---that
 is one of the motives which has engaged the Canadians to
 petition

By these quotations from their petitions and memorials, the true grounds of opposition may easily be discovered. They feel, as every person in that country does, that the great grievance in the present system of government in that Province, is the want of a proper legislature, and that from this source all the anarchy and confusion of the laws proceed. They have in consequence complained openly, and in express terms, of the Legislative Council*. Both parties,

petition his Majesty, in the hopes that these inconveniences might be rectified---with a view to prevent our falling into greater distress, we trust in your Excellency's goodness, who has so long protected us, that you will be pleased to endeavour to obtain of his Majesty, and of Parliament, permission to re-establish all precipitate abrogations of our laws, and to prevent all alterations in future.

* On the second object we have to remark, that notwithstanding the favour which your Majesty has granted to your Canadian people, in preserving their municipal laws to them, they have enjoyed them very imperfectly, and the reason is, that two-thirds of the legislative Council, being composed of ancient subjects, their influence preponderates, and they change and alter our laws as they please, and relatively for their own interests.

therefore,

therefore, have united in complaining of the improper and defective state of the legislature; and both parties have likewise agreed in praying for a reform of that body, and for the enjoyment of the rights of British subjects, of which representation in the legislature is one of the most important.— But the great danger these Counter Memorialists affect to apprehend from a House of Assembly is, *that the Protestants will have the greatest influence in that House*; this, we presume, will not be considered as a good argument against the House of Representatives by the British nation. The Protestants will, for their own interest, be careful in enacting laws to promote the general prosperity of the Province. They possess nearly one half in value of all the seigniuries of the Province (those belonging to his Majesty and the religious communities excepted) and besides, the whole mercantile and floating property of the Province be-

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longs to and depends on them; they are therefore too much interested in the welfare and prosperity of the Province for any danger to be apprehended from their possessing a large share of the legislative powers. This is more clearly stated in a memorial presented to Lord Dorchester, dated the 1st and 5th of December last†.

But these pretended fears exist perhaps only in the minds of a few of the individuals who were principally concerned in framing these counter Petitions. Their consequence in the society may perhaps be affected by a free system of government, though that of the Canadians in general must be greatly advanced.

Such is the nature of the opposition made to the reforms prayed for in the constitution of the Province of Quebec. We cannot suppose that much consideration will be given to the representation of people who

* See Appendix, No. XX.

are so inconsistent with themselves: They stile themselves the Opposers of the Reform; and every one of their petitions and memorials contains the strongest reasons for it.

We cannot suppose it possible that a people, unless deceived by false reports or alarmed by imaginary dangers, can ever be induced to pray for a continuance of slavery and arbitrary power. The Canadians are as fond of liberty and as warmly attached to it, as any people in the world; though having never enjoyed it constitutionally, they may be unacquainted with the principles that protect and support it.

Liberty is congenial to the feelings of all mankind; and the security which flows from a free constitution to both political and civil liberty, contributes greatly towards bringing forth the powers of the human mind, and to the encouragement of the industry of the people; but no constitution

can be called free where the people are not allowed to participate of the legislative authority by their representatives*: This is the great criterion of freedom; and it is extremely natural for all British subjects, as they know the value of it, to struggle for such a valuable right. Great Britain has constantly acknowledged this principle in the constitution she has granted to all her Colonies; and by that means has rendered them more flourishing and prosperous than those of other nations†. As all parties,

* As in a free state, every man who is supposed a free agent, ought to be his own governor; so the legislative power should reside in the whole body of the people. But since this is impossible in large states, and in small ones is subject to many inconveniences, it is fit the people should act, by their representatives, what they cannot act by themselves.

Montesquieu, Vol. I. page 191.

† As men are fond of introducing into other places what they have established among themselves, they (meaning Great Britain) have given the people of their Colonies the form of their own government; and this government, carrying prosperity along with it, they have formed great nations in the forests they were sent to inhabit.

Montesquieu, Vol. I. page 390.

therefore,

therefore, agree in complaining of the present legislature of the province, because it is composed of a permanent council only, and the members of it are, from its constitution, considered as in too dependant a situation, we hope no material objection can be raised against a House of Representatives for the province*. The legislative acts of that body will be liable to the discussion and dissent of the legislative Council, which will be entirely named by his Majesty ; and the acts, when agreed on by both, will not have the force of law, unless ratified by the Governor ; and after all, they will still be subject to the revision of his Majesty, and to be rejected, as in his wisdom he may see

* When different legislative bodies succeed one another, the people who have a bad opinion of that which is sitting, may reasonably entertain some hopes of the next ; but, were it to be always the same body, the people upon seeing it once corrupted, would no longer expect any good from its laws ; and of course they would either become desperate, or fall into a state of idolence.

Montesquieu, Vol. I. page 193.

proper. We cannot perceive any danger that can be even apprehended from a body over which Government will have so many checks ; and a House of Representatives conversant in the resources of the country, and possessed of the powers necessary for improving them in their whole extent, must give strength and energy to Government, and will present to the province the pleasing prospect of securely enjoying political and civil liberty, and of quickly rising in value and importance to Great Britain.

We disclaim every idea or intention of party in discussing these points, or in proposing or recommending any system, or any part of a system, to the consideration of Government. We have undertaken it on the broad basis of reciprocal benefit to the parent state and to her dependancy ; and we hope we have not deviated from that line. A British province labouring under the oppression of a system of laws
and

and constitution of government not adapted to its situation, nor well understood, and praying to be allowed to participate in those privileges which their fellow subjects enjoy in all the other parts of the empire, ought surely to rouse the patriotic zeal of all the virtuous part of the nation. It is the cause of liberty and of humanity; and on that account stands forcibly recommended to the attention and support of the British senate.

To them the Province appeals, as being the guardians of the rights of all the subjects of the empire; and it is from them the Province expects relief. Why should that Province be the only one belonging to, or dependant on, the crown of these realms, doomed to labour under the heavy hand of arbitrary power? It is contrary to the British constitution, and a dangerous innovation.

If the British senate ever countenances the establishment of arbitrary power in any

the most distant of her settlements, these principles will spread, and may at last attack even Britain herself; for if the little finger is allowed to mortify, the contagion will soon spread over the whole body.

It cannot be expected that the people will be satisfied without a liberal system of government, and representatives in the legislature. They have, by their petitions, stated their grievances to his Majesty and to Parliament, with firmness and moderation. By a steady perseverance in pursuit of their rights and privileges, they have now the prospect of having their petitions soon brought under the discussion of the British senate; and they cannot doubt but they will receive that relief which they merit, from having so long patiently endured such accumulated oppression. They hope that his most gracious Majesty, and Parliament, will see the propriety, the policy, the justice of giving to that province a liberal constitution,

stitution ; as not any thing short of a house of representatives, can effectually cure the disorders which have so long prevailed and have taken such deep root in that country, or restore that confidence in government, and produce that harmony, which are so necessary to the public peace.

Schools and seminaries for the education of youth are much wanted, to rescue the rising generation from that profound state of ignorance which has so long disgraced the province: There are no proper court houses, poor houses, infirmaries, or houses of correction, in the province ; the prisons are in a ruinous situation, and the markets not properly established ; the police of the towns is in a very imperfect state ; the high ways are at times almost unpassable ; bridges are become necessary in many places to facilitate communication ; and money is wanted for all those important objects.

Under

Under a liberal system, the hands of government will be strengthened, the people would feel themselves interested in the support of it, and in the preservation and defence of the province ; agriculture would be improved ; that, and the fisheries extended ; and the general commerce of the province greatly encreased ; the demand for British manufactures augmented ; and employment furnished for some hundreds of British ships : The province would rise in importance and population, and become the envy of the late British colonies, now the United States ; and Britain would save a considerable sum now drawn out of her treasury annually for the payment of the officers of the civil government of that country. We are confident that to procure these advantages, and to secure the privileges of Britons, to a British colony, the whole powers of the British senate will be exerted ; that that

patriotism

patriotism which has so often shone with benignant splendor in that august body, will find itself agreeably employed in rescuing the inhabitants of the province of Quebec from their present deplorable situation ; and we trust, that a government will now be established for that province, on such permanent and fixed principles, as may call forth the unceasing gratitude of its inhabitants, and convince them, that their own comfort and happiness and that of their posterity depend on an union with, and submission to, the imperial Crown and Parliament of Great Britain.

APPENDIX.



APPENDIX. No. I.

*Extract from the King's Proclamation, dated
7th October, 1763.*

“ WE have thought fit to publish and de-
 “ clare, by this our Proclamation, that
 “ We have, in the Letters Patent under our
 “ Great Seal of Great Britain, by which the said
 “ Governments are constituted, given express
 “ power and direction to Our Governors of Our
 “ said Colonies respectively, that so soon as the
 “ state and circumstances of the said Colonies
 “ will admit thereof, *they shall, with the advice*
 “ *and consent of the Members of Our Council, sum-*
 “ *mon and call General Assemblies within the said*
 “ *Governments respectively, in such manner and form*
 “ *as is used and directed in those Colonies and Pro-*
 “ *vinces in America which are under our immediate*
 “ *government; and we have also given power to the*
 “ *said Governors, with the consent of our said Coun-*
 “ *cil, and the Representatives of the People, so to be*
 “ *summoned as aforesaid, to make, constitute, and*
 “ *ordain Laws, Statutes, and Ordinances for the*
 “ *public peace, welfare, and good government of Our*
 “ *said Colonies, and of the people and inhabitants*
 “ *thereof,*

“ *thereof*, as near as may be agreeable to the laws
 “ of England, and under such regulations as are
 “ used in other Colonies ; and in the mean time,
 “ and until such Assemblies can be called as
 “ aforesaid, all persons inhabiting in, or resort-
 “ ing to, Our said Colonies, may confide in Our
 “ Royal protection for the enjoyment of the be-
 “ nefit of the laws of Our Realm of England :
 “ for which purpose, We have given power,
 “ under Our Great Seal, to the Governors of
 “ Our said Colonies respectively, to erect and
 “ constitute, with the advice of Our said Coun-
 “ cils respectively, Courts of Judicature and
 “ Public Justice, within our said Colonies, for
 “ the hearing and determing all causes, as well
 “ criminal as civil, according to law and equity,
 “ and as near as may be, agreeable to the laws
 “ of England, with liberty to all persons who
 “ may think themselves aggrieved by the sen-
 “ tence of such courts in civil cases, to appeal,
 “ under the usual limitations and restrictions, to
 “ Us in Our Privy Council.”

APPENDIX. No. II.

Clause in General Murray's Commission of
21 Nov. 1763.

“ AND We do hereby give and grant unto
“ you the said James Murray, full power
“ and authority, with the advice and consent of
“ our said Council, to be appointed as aforesaid,
“ so soon as the situation and circumstances of
“ Our said Province under your government
“ will admit thereof, and when and as often as
“ need shall require, *to summon and call General*
“ *Assemblies of the Freeholders and Planters within*
“ *your government*, in such manner as you in your
“ discretion shall judge most proper ; or accord-
“ ing to such further powers, instructions, and
“ authorities, as shall be at any time hereafter
“ granted or appointed you under Our signet or
“ sign manual, or by Our order in Our Privy
“ Council.”

APPENDIX.

APPENDIX. No. III.

Clauses in the Ordinances of 17th Sept. 1764.

“ IN this Court (the superior Court) his Ma-
 “ jesty’s Chief Justice presides with power and
 “ authority to determine all criminal and civil
 “ causes agreeable to the laws of England, and
 “ to the ordinances of this Province.”

A court of Common Pleas was also established,
 with liberty to appeal to the King’s Bench where
 the matter in contest was above 20l.

Clause in the Ordinance of 6th Nov. 1764.

“ Doth hereby ordain and declare, that until
 “ the tenth day of August next, the tenures of
 “ lands, in respect to such grants as are prior
 “ to the cession thereof by the definitive treaty
 “ of peace, signed at Paris the 10th of Fe-
 “ bruary, 1763, and the rights of inheritance,
 “ as practised before that period, in such lands
 “ and effects, of any nature whatsoever, accord-
 “ ing to the custom of this country, shall re-
 “ main, to all intents and purposes the same,
 “ unless they shall be altered by some declared
 “ and positive law.

“ And

*Clause in Mr. Hey's Commission of Chief Justice,
dated 25th Sept. 1766.*

“ And the said pleas, actions, and suits, and
“ every of them, to hear and determine in man-
“ ner and form aforesaid, doing therein that
“ which to justice doth belong and appertain,
“ according to the laws and customs of that part
“ of our kingdom of Great Britain, called Eng-
“ land. And the laws, ordinances, rules and
“ regulations, of our said Province of Quebec,
“ hereafter in that behalf to be ordained and
“ made.”

APPENDIX. No. IV.

*Presentment of the Grand Jury at the Court of
King's Bench, held at Montreal, 2d Sept.
1782.*

THE Jurors of Our Lord the King, for the
body and district of Montreal, do present, that
the Jesuits College, or that part of it which for
many years past hath been appropriated and used
for the common gaol for this district, is very
insufficient for the purposes of a civil prison, is

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in a ruinous condition, and is become a nuisance to the public, and dangerous to the health and lives, as well of the persons confined therein, as to others his Majesty's subjects.

That it is insufficient for the purposes of a civil prison, will appear on considering that there are but three small apartments, into which are put prisoners of both sexes, and every denomination, whether for debt, breaches of the peace, or the most flagrant crimes: and on the representation of the Sheriff of the district to their honours the Judges of the Court of Common Pleas, of the insufficiency of this prison, they have thought proper to order that execution should not issue against the persons of debtors who by the laws of the province may become subject to imprisonment.

Eighth Article of Report by Committee of Merchants of Montreal, to the Committee of Legislative Council. Dated 23d Jan. 1787.

THE want of a proper gaol for this district has long been complained of, and at divers times has been represented by different Grand Juries, as well at the Courts of Oyer and Terminer, as in the inferior Courts of Quarter Sessions; but hitherto no remedy has been applied. The house,

house, which at present serves for a gaol, consists of four very small rooms, in which are frequently confined promiscuously persons of different sexes, and for very different degrees of crimes. The unfortunate debtor cannot have a room to himself; nor can the malefactor, when preparing for the other world, be accommodated with a place of retirement to deprecate the wrath of the offended Deity. The insufficiency of the gaol, in point of security, occasions a guard of soldiers to be kept in the lower part of it; and even with that precaution, many atrocious offenders have escaped, inasmuch, that the Sheriff of the district has refused to confine debtors, unless the prosecutor agreed to take upon himself the risk of an escape. The situation of this insufficient gaol heightens the sufferings of the person whom the law dooms to imprisonment, offends every passenger in the warm season, and is a nuisance to the neighbourhood, being without those conveniences requisite to carry off the filth accumulated by the want of them.

Extract from the Report of the Committee of the Legislative Council, to Lord Dorchester, appointed to report on the Laws, dated 11th Jan. 1787.

Suitable Justice-Halls and Prisons—the latter, both at Quebec and Montreal, being in a condition neither consistent with humanity to the prisoners, nor safety to the Sheriffs or the public, and having been repeatedly presented as insufficient by the Grand Juries of both districts.

APPENDIX No. V.

Exports from Quebec 1788.

200,358	bushels wheat
9,868	barrels flour
15,775	quintals biscuit
1,770	bushels oats
881	bushels pease
11,972	bushels flax-seed
5,987	pine and oak plank
69,004	pine boards
401,972	oak staves, and heading
211,310	shingles

13,700

13,700	hoops	
1,528	shook casks	
1,229	pieces square oak timber	
80	masts and bowsprits	
660	casks salmon	
705	quintals cod fish	
24	horses	
7	casks Canada balsam	
18	casks	} essence of spruce
59	boxes	
8,629	pounds ginseng	
44,186	pounds adianthum nigrum	
395½	tons seal oil	
2,123	quintals pot and pearl ashes	
1,166	pounds whalebone	
200	bushels cranberries	
22,000	onions	
295	dozen handspikes	
130,758	beaver skins	
56,731	martin	do.
20,177	otter	do.
12,186	mink	do.
4,702	fisher	do.
7,510	fox	do.
15,041	bear	do.
151,535	deer	do. in the hair
3,244½	pounds dressed deer leather	
106,753	musquash skins	
115,556	raccoon	do.

7,060	cased cat	do.
2,161	open cat	do.
9,621	wolf	do.
13,680	elk	do.
438	wolvering	do.
35	panther	do.
175	feal	do.
1	weazle	
2,794	pounds castorum	

Custom-house, 10th November, 1788.

Shipped from the fishing posts within the Province, in the Gulph of St. Laurence and Streights of Belle Isle, the Reports of which never come to the Custom-house of Quebec—about

80,000	cwt. dried cod fish
8,000	tierces of salmon
500	barrels of herrings
11,000	feal skins
800	tons of oil

About 10,000*l.* value of furs, and some whalebone.

Imported

Imported into Quebec in 1788, from the Custom-house Books. Liquors.

1,357	puncheons of rum	
585	do.	of British brandy
1,484	do.	of melasses
976	pipes	} wines
1,266	hhds.	
96	barrels	
1,794	hhds. of porter	

Sundries.

138	large hhds.	} Muscovado
731	barrels and tierces	
40	boxes chocolate	
42	casks cocoa	
208	casks	} coffee
95	bags	
273	hhds. refined sugar	
596	chests of tea	
96,850	busshels of salt	
1,350	tons	} British coals, say in all
1,079	chaldrons	

2,600 tons coals.

APPENDIX, No. VI.

*Extract from a Protest by Geo. Allsopp, Esq.
Member of the Legislative Council of Quebec,
in Council, 6th March, 1780.*

I. IT must be allowed, that there is a manifest want of order and regularity in the Court of Common Pleas; the first judges or presidents of those courts not being versed in the science of the law, or the usage of courts of judicature, consequently cannot be supposed capable to form or keep up proper regulations for that end; nor do they confine themselves to rules of law, but occasionally decide on the equity of the case, contrary to the letter of the law; the impropriety whereof cannot be better defined than in the words and language of a law officer of respectable authority, in his observations on the former Court of Common Pleas, of which the president of the Legislative Council, and the three judges of the Common Pleas, now of the council, were members.

“ But how vague and uncertain their proceedings, as a court of equity, must be, without one established maxim of equity in the court? how

ill

ill calculated to preserve (what it certainly was not intended to preserve) an ancient system of laws, which were to be admitted or rejected upon motives of equity, adopted by gentlemen who merit however no other imputation, than the want of education in, or acquaintance with, courts of law or equity, and the confusion in which such decisions must necessarily be involved, are matters upon which, I think, I need not enlarge?"

Since the Quebec Act took place, little or no beneficial alteration has happened in the proceedings of these courts; on the contrary, the only desirable parts of the former system have been taken away, the subject has been deprived of the benefit of juries in actions for personal injuries; the merchant of the decision of causes by the law of merchants, and according to the laws of England, heretofore in use, prior to the introduction of the Quebec Bill; *and no positive law, no fixed or established rule to supply those defects.* The courts, now sole judges of the fact, and of the law, in all cases, and though generally unacquainted with law, and particularly with the laws of commerce, are left to their own judgments; consequently their decisions are too arbitrary, and their power too unbounded to tally with the principles of the British constitution!

To

To prove these assertions, it will be considered, *that the laws and customs of Canada, which form the most imperfect system in the world, for a commercial people, have, in matters of trade, been long since exploded in France, and the Code Marchand introduced in all their towns in its stead. Canada, before the conquest of it by his Majesty's arms, had little or no trade of consequence, except that of the India Company for furs, who monopolized almost the whole; and, therefore, probably not having so great occasion for the Code Marchand, or jurisdiction consulaire, it was not introduced into this country.*

APPENDIX, No. VII.

Extract from a Petition delivered to Lord George Germaine, Secretary of State for the American Department, 2d April, 1778, by the Canadian Merchants then in London.

THE Ordinances lately made by the Governor and Council in aid of the French law, have contributed to increase the general dissatisfaction. This Council, when only twelve members were present, and each of them bound by
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an oath of secrecy, proceeded to make laws without requiring the least information, and with the most total disregard of an application from the merchants who petitioned upon grounds of general utility, that they might not be deprived of the mercantile laws of England. The ordinances furnish further matter of complaint, because of the ambiguous terms in which they are expressed, of the indefinite powers which they give to the judges.

APPENDIX, No. VIII.

Extract of a Petition from the Canadians to his Majesty in September 1784.

SUR le second objêt, Sire, c'est que non-obstant la faveur que vous avez accordée a votre peuple Canadien, en le conservant dans ses loix municipales, il n'en jouit qu'imparfaitement, et la cause derive de ce que le Conseil Legislatif, etant composé aux deux tiers d'anciens sujêts, ces derniers ont toujours la prépondérance et font des changements, et alterations à nos loix, quand bon leur semble, et relativement a leurs interêts.

APPENDIX, No. IX.

*Extract from a Memorial of the Merchants of
of London (trading to Quebec) to Ministry,
dated the 24th January, 1786.*

THE present code of laws, if the mixture of French and English laws may be so called, not being well understood, the execution of them is subject to much difficulty and uncertainty; among other inconveniences, persons often claim the right of both, and take the advantage of that which best suits their purpose; by these and other means, the payment of debts are evaded, and right and property is rendered uncertain and insecure. The losses the British merchants have suffered from this evil, within the last three years, has occasioned the ruin of many; and such is the present want of confidence and want of credit in consequence of these disasters, that common ruin and general distress must ensue, if some effectual remedy be not immediately applied.

From the petition delivered last year to the Right Honourable Lord Sydney, signed by upwards of 1800 of the principal inhabitants;
from

from the letters lately addressed to us from the committee of Quebec and Montreal on this subject, (copies of which are hereunto annexed,) and moreover, from Our own knowledge, and the particular information Our connections in that country afford Us, *We are clearly and unanimously of opinion, that for the relief and redress of these evils, and the many other defects of the present constitution of that government, a provincial legislature, or house of assembly, established on the same principles as in every other British colony in America, will be effectual.*

We are equally confident, that it is the earnest wish and desire (whatever may have been represented to the contrary) of the principal as well as the generality of the inhabitants of the province, both old and new subjects, (and to which the loyal refugees have also added their testimony by petition) to be governed by British laws, to be made and administered according to the British constitution; they found their claim to it, not only as British subjects, but under his Majesty's special proclamation of the 7th October, 1763.

We conceive no other form of government will satisfy and quiet their minds, secure their rights, and protect Our property. We, therefore, feel it Our duty to recommend, in the most earnest manner, this measure to his Majesty's ministers, as the most essential for the security and prosperity of this valuable province;

province; and, that that obnoxious and impolitic law, the act for subjecting the British subjects of Canada to a government so repugnant to the ideas of Britons, and the British constitution, and which was so often cried out against, as one of the causes of the defection of the neighbouring colonies, may no longer disturb the peace of the loyal subjects of this province.

APPENDIX. No. X.

*Extract of a Letter from George Allsopp, Esq.
Member of the Legislative Council, to Lord
George Germaine, dated 29th October, 1780.*

“ HIS Majesty and his ministers will ever be
“ misinformed when their information is the re-
“ sult of enquiries made by interested persons,
“ or from those who shall associate with, and
“ take up their system from particular charac-
“ ters linked to each other. Your Lordship
“ will pardon me if I observe, that it is a fatal
“ truth, in my humble apprehension, that such
“ has been too much the case, with respect
“ to the information the Crown has unhap-
“ pily received from this province.”

APPENDIX.

APPENDIX. No. XI.

The following Articles are from the Report of Merchants of Quebec to the Legislative Council, dated 6th January, 1787.

Article X. The King's Proclamation of October 1763, promised the future settlers in this Province the benefit of the laws of England; those laws were accordingly introduced by an ordinance of the Governor and Council in Sept. 1764, but unfortunately abrogated in all civil causes by the act of 14 Geo. III. ch. 83, which statute, instead of remedying temporary abuses, introduced great evils, particularly to the trading interest of the nation. The merchants in England, and those of this Province, have severely felt the effects of laws, to which they were utter strangers, the principles whereof are anti-commercial altogether: The custom of Canada is a system so imperfect, that the decisions in the Courts have become arbitrary, and destitute of uniformity. The Court of Montreal differs in its practice as well as decrees, in some points of law, from that of Quebec; both Courts agree in not confining themselves to rules of law, but occasionally decide on the equity of the case, contrary to the letter of the law. Thus the custom

of

of Canada, the general laws of France, the Roman code, and in some commercial points, the laws of England have been resorted to; *but the most dangerous of all systems is that of the decisions in equity, of Courts strictly constituted as Courts of Law, without the ordinary rules, principles, and maxims of Courts of Equity to govern them. This versatility in the decrees of the Courts of Law alone, calls aloud for a solid system of laws, and surely no better can be resorted to than the laws of England, to govern the property of British subjects.* The imports and exports of the Province, being upwards of half a million a year, and from the nature of the property liable to be more affected by the laws of the country and the practice of the Courts than any other, We therefore recommend a re-introduction of the common and statute laws of England, as the general rule for the decision of all matters of controversy relative to personal property and civil rights, in all personal actions grounded upon debts, promises, contracts, and agreements, whether of a mercantile or other nature. And also concerning wrongs proper to be compensated in damages, with an exception to the statutes regarding bankrupts, and other local laws, hereafter to be explained as inapplicable to the situation and circumstances of the British Colonies in America in general, or this in particular; with an exception also to all real actions
and

and controversies respecting the titles of land, and the tenure, descent, alienation, incumbrances and settlements of real estates, and the distribution of the personal property of persons dying intestate, in which his Majesty's new subjects are most interested) for the decision of which, except in cases hereafter to be mentioned, resort should be had to the laws and customs of Canada, but that juries should be granted in all Courts having original jurisdictions, if demanded by either party, in all real and personal actions whatever.

Article XI. The defects in the practice in the inferior Courts, as pointed out in the observation on the last article, have made their way into the Court of Appeals, which, for these eight years last past, has laboured under a great disadvantage, namely, *that of not having one gentleman bred to the science of the law, presiding or sitting in that Court, in order to explain the law, and point out the errors in the proceedings, if any, to the other members.* Indeed it is much to be lamented there do not preside in all the Courts regularly-bred professional men, capable of conducting the business with propriety and dispatch. The great number and fluctuation of the members of this Court, must also of necessity embarrass the decisions and create delays. If this Court was in its constitution assimilated to that of others in his

Majesty's Colonies, we humbly conceive that the alterations would be beneficial to the subject.

Concluding clause.—In general, and upon the whole of these observations, which we have humbly offered, may be collected the utter impossibility of governing this Province, as a British Colony, and promoting its prosperity, without a power existing somewhere of levying inland taxes, and providing for useful regulations.

This consideration we humbly submit to the Honourable Committee of Council, and refer them to the petition we had the honour to transmit to his Majesty and both Houses of Parliament two years ago, for granting a House of Assembly to his Majesty's faithful subjects of this Province, a copy of which accompanies this Report :

Extract from Report of the Merchants of Montreal, to the Legislative Council, 23d Jan. 1787.

Upon the whole of the observations which we have humbly offered, may be collected *the utter impossibility of promoting the welfare of this Province, as a British Colony, under the present system of government.*

This

This consideration we submit to the Honourable Committee of Council, and refer them to the petition we had the honour to transmit to his Majesty and both Houses of Parliament two years ago, for granting a House of Assembly to his Majesty's faithful subjects of this Province, a copy of which accompanies this Report.

Extract from Report of Committee of Legislative Council on Commercial Affairs, to Lord Dorchester, dated 29th Jan. 1787.

On the 6th January, the merchants of Quebec delivered their opinions and representations on a variety of objects of commercial and political regulations, to which they have annexed a copy of a petition to his Majesty, transmitted to the Right Hon. Lord Sydney in the spring of 1785.

On the 27th January, the magistrates and merchants of Montreal delivered their opinions.

In both of these they have deeply and accurately treated, and judiciously reasoned on the actual situation and various interests of the Province.

We should therefore be wanting to them and to your Excellency, if we did not annex and recommend their representations to your Lordship's most serious consideration and reflection.

APPENDIX. No. XII.

Extracts from a Protest made in Legislative Council. Quebec, —, 1787.

DISSENTIENT,

First. Because the refusal to commit the Bill, implies a disapprobation of every part of it, as incapable of being so altered as to retain a single clause, and amounts as clearly to a rejection of every paragraph of it, as if each had been separately voted to be struck out; and it was so explained and understood, and that intention avowed by every speaker against the commitment.

Second. Because the regulations for the administration of justice in all the Courts of Common Pleas, as well as in the monthly Court of Appeals, were so obviously expedient in the eye of mere abstract theory, as to require only to be read to be approved, and might have been contended for by the Judges, without any disparagement of character or office; and served for no mean defence against the clamours and complaints to which Courts, where the Judges find both law and fact, are obnoxious; and especially in such a country as this, where they hold the mighty power of settling the question, what was or was not, the custom and usage,
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as well as the law, of the Colony antecedent to the conquest.

Third. Because one of the best securities for the permanent duration of the privilege granted by the statute, commonly called the Quebec Act, to his Majesty's Canadian subjects, is their ready manifestation of a correspondent liberality to his Majesty's native-born subjects, through the voice of that legislature which the statute erects, and of which his Majesty has constituted so many of the Canadian gentlemen to be members. The Bill pointed to a measure for shewing such a disposition, without the smallest infringement of the benefit granted by the British Parliament to themselves; and it had succeeded, if only one of them had given his voice for the commitment, the question being decided by the Chair.

Fourth. Because the postponing the relief which, according to this Bill the Governor was to be enabled to afford to the American Loyalists settled in our frontiers, to us appears inconsistent with the interests of the Crown, and repugnant to every motive of sound policy, as well as the sympathy we ought to have for those, who with so much honour to themselves, have sacrificed every consideration of private interest to their faithful affection to their sovereign and the British cause, and to whom, as subjects of tried loyalty and men of arms, this Province may be one

day obliged to look for its protection and defence; to say nothing of what it became the King's servants here to have done, for sufferers of such distinguished merit, in obedience to the royal commands, communicated to General Haldimand by a letter from Lord North.

Fifth. Because the Bill was framed to heal the divisions and animosities which have so long subsisted in the Colony to its disgrace and detriment; and, we are fearful, that the rejection of it will not only raise a spirit, which as a party one in the trite game of selfish ambition and avarice, for petty consequence, place and profit, is always contemptible, and though sometimes harmless, is nevertheless to the last degree dangerous in a country of mixed nations, habits and languages, where the name of the party, if the contest respects the substantial interests of the crown and nation, will be changed into the serious discrimination of loyal and disaffected.

And we are the more anxious for the general harmony, as these discords, by encreasing the debility of the Province, predispose it to become the theatre for the malignant machinations of the internal malcontents of Great Britain, and the hostile views of foreign powers.

Sixth. Because without some regulations, to quiet the murmurs against the course of administering justice, which has obtained here for years past, expressed
in

in the Reports on our table from the magistrates and merchants of the Province, and the complaints to the King's ministers by the merchants of London, the commerce and settlement of the Colony cannot advance in the course necessary to give it strength, for its own security, and to cover the two other Provinces, fortunately to all of them, committed to the wisdom and vigilance of the noble Lord, who is so well disposed and qualified to raise them to safety and prosperity, if their own cheerful co-operation shall not be wanting.

We lament, therefore, the loss of this Bill as embarrassing, if not defeating, the provisions expedient for the interests of the crown, as unfriendly to the commerce of the nation, as distressing to the loyalists who have fled to our borders for refuge, and have the most unexceptionable claim, at least, to legislative regulations for their comfort, as tending to distract the minds of the inhabitants with jealousies, to the reducing of the force of the Colony, and, as the consequence of all, the exposing of it to the operation of foreign principles, smoothing the way to an invasion. AND THIS PROTEST WE MAKE in vindication of ourselves to his Majesty, and his Representative, and with the sincerest desire to preserve the tranquillity of the Province, and the interests of every order of men in it, protestants and catholics, by all the means that may consist

with our duty to the crown, and a warm and affectionate regard for the weal of the British empire.

Quebec, 19th March 1787.

Monday, 9 o'clock, A. M.

(Signed)

WILLIAM SMITH, Chief Justice.

HUGH FINLAY, Post Master General.

EDWARD HARRISON.

JOHN COLLINS, Deputy Surveyor General.

GEORGE POWNALL, Secretary of the Province.

HENRY CALDWELL, late Dep. Receiver Gen.

WILLIAM GRANT, late Dep. Receiver Gen.

SAMUEL HOLLAND, Surveyor General.

SIR JOHN JOHNSTONE, Bart. Super-Intendant
of Indian Affairs.

APPENDIX. No. XIII.

*Extract from Paper laid before Legislative
Council 18th April 1787, by the Committee
of Merchants.*

THAT the *French laws*, as said to be established, and as proposed to be continued, are wholly inadequate to secure the peace and prosperity
of

of the King's natural born subjects residing in the Province ; or wisely and justly to protect and govern commercial rights ; or to hold out as the means (but would prove a powerful bar) to population.

That under these laws, our civil rights are unknown, and property is insecure.

That infinite injury has arisen from holding the mercantile interests and rights to be governed and administered in the King's Court by such laws.

That the merchants in London, trading to this Province, had complained to the King's ministers of these evils, and of the ruinous effects that actually had arisen, and the consequences that must arise, from such a system or code of laws, and had prayed for relief.

That the King's new subjects, the Canadians, in the year 1773, when they petitioned his Majesty to obtain a security in their property and possessions by the known rules of their ancient laws, at the same moment implored his Majesty equally to extend his protecting hands and care to his natural-born (ancient) subjects.

That the constitutional principle of colonization, in every modern empire, is the extension to such colony of the national laws for securing the personal rights of the natural-born subjects.

That such would be the only wise and political means to populate this extensive colony, to increase

increase its commerce, to improve its utility and subordination to Great Britain, and in that, and by those laws, to render the people wealthy, numerous and happy.

That the legal and judicial construction given in this Province upon the Quebec Act was, that it fully introduced the general edicts and ordinances of France, and the custom of Paris, as used and exercised during the French government as the only rule in his Majesty's Courts for deciding civil rights between *all* his Majesty's subjects, old and new.

That the judgments of the said courts were not made upon such rule of prevailing law, either in uniformity admitting or rejecting the edicts or ordinances, or the articles of the custom of Paris; and did at times admit either, and at times reject both, and adopt the English statute and common law, as the law to administer substantial justice :

That this uncertainty in the judicial proceedings and judgments of law, and in the exercise of a judicial authority not founded in the law of the province that legally ought to prevail, and thereby legislating, will stand proved upon enquiry into the several cases stated at the Bar of the Council, and others, which your petitioners are ready to adduce :

That there was not that essential uniformity in the judgments, and regularity in the proceedings

ings of the said courts absolutely requisite to secure the rights of the subject :

That those evils were manifest, and ruinous to the King's subjects ; that they resulted from the causes which the proposed bill would not only continue, but infinitely increase :

That from want of certainty in the rules of right, and of known laws suited to the interest of the nation and its commerce in this province, infinite distress had fallen on the King's subjects, and had occasioned great disturbance in their minds ;

That the laws proper to be established were those of England, in personal and civil rights ; especially between all his Majesty's *ancient* subjects in any commercial case.

Extract from Papers laid before Legislative Council, by the Council for the Commerce.
30th April 1787.

AND further, on the part of the petitioners, by a variety of proofs to shew and support the charge of an *unfit administration of justice in his Majesty's courts in this province*, to wit, the Courts of Common Pleas, holding cognizance of causes above and under ten pounds sterling ; and, by fully exhibiting the judicial proceedings of the
said

said Courts, to shew the want of order, rule, regularity, certainty, and the great delays and procrastination therein, and to make appear the insecurity of civil rights, and the distress of his Majesty's subjects under the present laws, and the powers exercised in the administration of justice by his Majesty's said courts.

APPENDIX. No. XIV.

Being Extracts from the Evidence given before the Commissioner for the Investigation into the past Administration of Justice in the Province of Quebec.

Extract from the Evidence of William Grant, Esq. Member of the Legislative Council, and one of the Judges in the Court of Appeals.

Answer XI. Yes; I have read pleas, declarations, answers, and reasons of appeal, where both French and English law were cited as applicable.

Answer XIII. The Canadian judges, from their reasoning, I believe, generally give their judgments on French laws, and what appears equitable to them.
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There are of the English judges in the Court of Appeals, who do not pretend to understand the French law, or law books ; their decisions, therefore, must be given on their ideas of the English law, or on the sense of the principles of equity arising out of each particular case.

The English gentlemen, who understand both languages, have always, in my opinion, made up their judgments *either on the laws of Canada ; that is, the written custom of Paris, and such judgments, ordinances, and declarations of the intendants and superior council, and edicts, ordinances, and declarations of the Kings of France, as in their apprehensions were introduced into, and applicable to the state of, the colony antecedent to the conquest, or upon English law and statutes, as the justice of the case required.* Decisions on real right, since the Quebec Act, *have, or ought to have, been governed by French law ; many mixed and personal actions, particularly personal actions of a commercial nature, have been and must be decided by English law and usage, or participate, to do justice, of English and French.*

Answer XVIII. The Court of Appeals consists of twenty-three members, Canadians and English ; any five of whom, with the governor, lieutenant governor, or chief justice, make a Court of Appeals ; each member gives his vote or voice on each cause, beginning with the youngest

youngest; and the majority of votes decide it. *The Judges of this Court, as of the Common Pleas, (the Chief Justice excepted,) have not been professionally bred to the law; therefore, it is not surprising that judgments of courts, so composed, and so fluctuating, should be contradictory. I do not believe, that any court in the province has laid down, or established by its judgments, the law to govern commercial and personal actions in all cases.*

Answer XIX. The gentlemen of the bar have appeared to me much embarrassed to advise their clients, of the law which the courts would adopt to decide personal actions, and still more so to ascertain the law that would or ought to govern the points of practice. The ordinances of the province, the code civil of Louis XIV. in 1667, commercial laws of France and of England are resorted to as imagination directs. I have had occasion to consult the English and Canadian advocates or practitioners, and have found such to be their legal advice.

Extract from the Evidence of Hugh Finlay, Esq. Member of the Legislative Council, and Judge in the Court of Appeals.

Answer XVII. The causes Dobie and Gray v. Lyons; Anderson and Parr v. Thomson and Shaw;

Shaw ; were founded upon mercantile transactions, and adjudged in the Court of Appeals by the ancient laws of Canada.

Answer XVIII. From my notes I find the following causes were decided in the Courts of Appeals on the principles of English law,—Scheffelin v. William Grant ; Louis Aimé v. Barrack Hays ; Graham v. Park ; M'Kenzie v. Brash and Lindefay ; Grant and Blackwood v. Thomson and Shaw ; Freeman v. Widow Perrault.

Answer XIX. I have not known that the Court of Appeals, in the decision of any cause, ever formally laid down a general principle of law to govern the transactions of his Majesty's subjects ; but I believe both the English and Canadians, members of that Court, decide according to their conceptions of the spirit, true intent and meaning of the Quebec Act.

Some of the members, and I believe all the Canadian gentlemen, have conceived, that that Act has established the ancient laws and customs of the country as the rule of decision in all cases of what kind or nature soever. Other members again (most of the English) are of opinion, that where the parties are ancient subjects, the cause purely English, a mercantile or personal action, to do strict justice according to the real spirit and the true intent of the Quebec Act, the decision ought to be founded on the rule laid down for deciding a similar case in England.

Answer

Answer XX. The case of Mabbut and Wilkinson, *partie intervenante*, against Howard, for George Allsopp to seize 19 hogheads of brandy unpaid for, according to the *coutume*, was given in favour of Howard in the Court of Common Pleas. The judgment was reversed in the Court of Appeals on principles of English law.

Extract from the Evidence of George Pownall, Esq. Member of the Legislative Council, and Judge in the Court of Appeals, given before the Commissioners for the Investigation into the past Administration of Justice.

Answer XIII. I cannot take upon me to say what have been the arguments, or what have been the points of law that may have guided my brother Judges of Appeals in their judgments and decisions, from memory, nor indeed is it in my power, from seldom hearing either their arguments or reasons whereon they have grounded their decisions.

For my own part, I can say, that when I conceived the English law applied, as particularly in several causes of a mercantile nature, or on bills of exchange, I have, in such causes, formed my judgment to the best of my abilities on those laws.

Answer

Answer XIX. I do not recollect any instance where they have established a general rule or positive principle.

APPENDIX. No. XV.

Being Extracts from the Evidence given before the Commissioner for the Investigation into the past Administration of Justice in the Province of Quebec.

Extract from the Evidence of William Dummer Powell, Esq. Barrister and Practitioner at the Bar of Montreal.

Answer II. During my practice, until the commencement of the last July Term, I have instituted 265 actions for sums above 10l. amounting together to about the sum of one hundred and ten thousand pounds, nine tenths of which sum I suppose to have become due from mercantile transactions, and of that again, nine tenths wherein old subjects were plaintiffs.

Answer IV. I have found the judgments of the Court of Common Pleas, for the district of Montreal, founded sometimes on the ordinances of

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France,

France, sometimes on the custom of Paris, sometimes on the laws of England, but in common, I have not been able exactly to ascertain on what law they have been founded. I have known cases adjudged by different rules of law; the greater number of judgments pronounced in causes, in which I have been concerned, I consider to have been decided rather on the Judges' sense of equity and moral rectitude, than on any known principle of law.

Answer XIII. I truly believe, that the major part of the judgments upon causes pleaded, have been pronounced without any immediate attention to any direct law.

The judgments upon the same points have been so inconsistent, that it was not possible to advise on any given case subject to the least discussion, what would be the probable issue.

Answer XVI. I have heard more than once, but cannot answer when, the Judges Frazer and Rouville declare from the Bench, that the ancient laws of Canada, with the ordinances of the Legislative Council, were the sole laws for decision of all civil actions in their courts, and I have heard (but cannot fix the time when) Judge Southouse declare upon the Bench, that he had no occasion for a knowledge of the French law contained in the books then on the table in Court, as his conscience was the law which guided his judgments.

Extract

*Extract from the Evidence of James Walker,
Esq. Practitioner at the Bar of Montreal.*

Answer II. I cannot ascertain the number of actions I was employed in prior to the 1st of January 1780, as I kept no account of them before that time; but since then, to the beginning of last Term, making seven years and a half, I instituted five hundred and eighty one; was of counsel in five hundred and odd others; and defended four hundred and twenty, all actions above ten pounds sterling; as to Friday suits, or actions under ten pounds sterling that I have been employed in, on the nearest computation I can make, they exceed three thousand within the same compass of time; and I believe, on a pretty exact calculation taken from my dockets and papers, I find that those various actions *exceed three hundred thousand pounds, of which about nineteen twentieths has arose from mercantile transactions.*

Answer X. The use or necessity I found in applying such different quotations of laws from different countries to be taken up and considered by the Court in giving their judgment, proceeded from a studied attention on my part in the beginning of my practice in this court, to discover what fixed or certain laws guided the

court in making and forming their judgments, and from the variety of decisions given in similar cases, which I conceived entitled to similar judgments, *I concluded that no fixed law, or any general rule or principle of law, governed them in making up the same; but, on the contrary, had reason to believe, that their judgments were in general arbitrary, and governed either by the character and quality of the parties, or from their own ideas of right and wrong, without adverting to any law; from which observation, I have given opinions to risk trials, where the governing law of the province has not been favourable to my cause, confiding wholly for success in that uncertainty which appeared to me to pervade the whole of their judgments; from those motives, and under those circumstances, I cited such law as I could meet with in any degree applicable to my case, and when my client has not been totally out of favour with the court, I have frequently prevailed.*

Answer XII. And a few days afterwards permitted a writ of *scire facias*, a process grounded on the common law of England, and unknown by the French law, to issue on the judgment so entered.

Answer XVI. I have myself publicly complained, and heard every practitioner at the Bar complain, of the uncertainty of the proceedings, and of the judgments of the said Court, for the want of having

having or knowing any general or determinate law, by which causes in general, or causes of any particular nature, real or personal, before the said Court, would be adjudged ; and I have myself complained, and heard every practitioner complain of the irregularity of the proceedings of the said Court, and of its delays in hearing and adjudging causes before it.

Answer XVII. I have heard Mr. Justice Frazer declare, *that the ancient laws* as used, and in force in this province prior to the conquest, were the laws to prevail for the government of all civil actions and suits before his Majesty's courts ; and I have likewise heard Mr. Justice Southouse give his opinion, though I cannot positively say whether from the Bench, *that the law of England* was the law that he should follow in the determination of suits between Englishman and Englishman.

Extract from the Evidence of Arthur Davidson, Esq. Attorney at Law and Practitioner at the Bar of Montreal.

Answer IV. The claims of both these plaintiffs were founded on the *coutume de Paris*, which I have heard admitted to be law, and not to be law, or at least have found it not to be followed or ob-

served as such, by all or any of the Judges of the said Court, except Mr. Judge Southouse, whom I have always found consistent in his declarations, that it was no law to govern him.

Answer VI. Many causes, I have no doubt, would have been determined differently from what they were, had some edicts or ordinances which, it is my opinion, were legally in force in this province since the Quebec Act took effect, been admitted as law; but whether such causes, as may have been so determined, were tried and judged in the said Court upon the custom of Paris, or Roman and civil law, is best known to the Court or Judges who tried them. *I having seldom or never had the satisfaction to be told, or to know on what law their decisions were founded; and most of the decisions, I have no doubt in my own mind, having been given not in proper legal conformity to any known law, but according to the ideas and will or pleasure of the Judges.*

Answer VII. And that the power heretofore exercised by the said Judges of granting conservatory seizures, (every one of which, in my opinion, makes the person, against whom it is put in force, to all intents and purposes a bankrupt, if of a situation or profession to become one,) in the most unlimited manner, and upon the most vague and frivolous suggestion and pretence, was of a most illegal, dangerous, and unwarrantable nature, and
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big with danger to the first men in this district, and there is no law in this or any other country, having the least pretensions to freedom, that can or ought to arm judges with such discretionary powers, as to make the first characters in the community, and particularly mercantile characters, tremble at a judge's nod.

Answer XIII. My mode of conducting my clients' causes in the said Court, as the means most likely to be attended with success, has been *to use such arguments as I have found best adapted to what I cannot call less than the prejudices of the Judges*, after experiencing, to my great dissatisfaction and concern, that the best and most legal arguments, as well as authorities, which, in my judgment, I could adduce, were so far from having weight with them, that they were often treated as mere chicanery.

Answer XVI. I have heard Mr. Judge Frazer judicially declare, I cannot take upon me to say exactly when, or upon what particular occasions, that *the ancient laws, as used and in force in this province prior to the conquest, were to be considered as the laws now in force*, for the decision of civil rights and suits, or words to that or the like effect; also, on determining causes respecting bills and notes, and I believe on the treating some other causes which I don't particularly recollect, that the *laws of England were to be con-*

sidered as the laws in force, on which last occasion no other authorities seemingly were consulted by the Court, or had any weight. And I have heard Judge Southouse several times say, that the ordinances of the province and his conscience were the only guides to govern him in his decisions.

A man might sue and have judgment for whatever he pleased, in case the defendant did not appear and defend the action, *contrary not only to the said ordinances, but to every other law I know, except in England, in the case of specialties. The case of Wiseman against Thomas Walker, jun, on the 26th March, 1778, was the first judgment by default I have observed since the year 1775, without its appearing by the register that any proof was given, or required to be given, of the debt. But afterwards there seem to be few or none otherwise, and some of them even for damages, as abovementioned.*

July 2d 1778. Campeau against Poudret and Aubert; *judgment by default for a blank sum, for alleged damages, without proof. The very sum demanded is also in blank, and without an attorney's name for the plaintiff.*

Same day, Biffon Pretre against the same defendant. Do. do.

July 9th 1778. Solomon against Rowland; *another judgment by default for a blank sum, both with regard to the demand and judgment.*

September

September 24th, 1778. Jenifon against Jean Morin Richard; judgment by default for 38l. 16s. *damages* without proof; according to a former entry too, of the 17th September, 35l. only is demanded.

December 10th, 1778. Jean Volan against Thomas Lee, defendant called—don't appear—condemned to pay the plaintiff 37l. 19s. 9d. with costs. This is a final judgment, and no default is stated, or appears to have been entered before, according to the ordinance.

June 7th, 1784. Col. Caldwell against Brown; the defendant *was condemned by default*, as appears by the register, this day (*the very same day that the summons was returned*) to pay the sum demanded by the plaintiff, *in which was included the penalty of an agreement, without proof that he had sustained any damage whatever*, by the non-performance of the agreement, or indeed any proof of any part of his demand, which amounted in all to 220l. with costs. It appears further by the register, that on the 14th of the same month, *the defendant was condemned a second time*, and in the second judgment *the said penalty is mentioned to be 50l.*

June 26, 1784. Andrews against Griverat and Visgar, James Abbot, William Groisbie, and Montagu Tremble, of Detroit, merchants, judgment by default, on a bond of indemnity for 9518l. 18s. 1d, *lawful money*, together with the interest
and

and costs already accrued, and costs of this suit, amounting to 7l. 10s. 5d. and interest till paid, *without the least proof that the Plaintiff had been damnified*, or so much as any suggestion or allegation tending that way, except that by virtue of judgments obtained against the house of Andrews, Griverat, and Wisgar. “ *The Plaintiff’s* “ *property was become liable to the payment of the* “ *said judgment debts.*

*Extract from the Evidence of Robert Ruffel,
Attorney at Law, and Practitioner at the
Bar, Quebec.*

<i>Jacque Frichet against Pierre Savard.</i>	}	Demand for 20l. 5s. currency. Declaration stated that plaintiff, being by trade a baker, he was in the winter of 1775, obliged to bake for the rebels; that finding the business too laborious, he took the defendant into partnership; and that the defendant was indebted to him in consequence 20l. 5s. currency.
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On the 2d of July following, the cause was tried, when the Court made the following judgment, viz.—“ The Court having heard the parties, likewise the deposition of Charles Dionne, “ orders J. Frichet, P. Savard, and Charles “ Dionne, to be committed to the common prison, reserving to give judgment for the flour “ belonging

“ belonging to the rebels left in the custody of
 “ the said Frichet, Savard, and Dionne.” The
 parties and the witness were committed *instante*,
 and, I believe, remained in prison until released
 by Lord Dorchester.

Answer III. The 30th title of the ordinance
 of 1667, Article II. whereby all agreements
 above 100 livres (equal to 4l. 3s. 4d. currency)
 should be reduced into writing, has been quoted
 in divers causes in the said Court as the law of
 the Province, and admitted as such, particularly
 in the cause of Mr. M'Aulay against Antrobus,
 wherein the Court *refused parol evidence* to prove a
 lease above 100 livres. It appears to have been
 rejected in the cause of Henderson against Stuart,
 where the Court (notwithstanding that the verbal
 lease mentioned in the plaintiff's declaration ex-
 ceeded 100 livres) *admitted parol evidence* of the
 lease. The *Code Marchand* was pleaded by Mr.
 Constant Freeman, in the cause instituted against
 him by Thomas Boylston, *but was rejected by the*
Court, as appears by the judgment. It was also
 quoted by the said Constant Freeman, in the suit
 instituted against him by Drummond and Jordan,
 as partner of the late Vialars. Mr. Freeman ob-
 jected to the Court's admitting parol evidence of
 the partnership, and quoted the first article of the
 4th title, notwithstanding which the Court made
 an

an interlocutory order, or judgment, admitting John Jones as an evidence, on taking the *voir dire* oath. It was also quoted by Louis Chaperon, in the cause instituted against him by Gregory and Woolsey, and *rejected without the Court's assigning any reason for so doing*. On the opposition à *fin de distraire* of the trustees to the estate of Charles Voyer, in consequence of the execution sued out at the instance of Cameron, Stuart, and Rofs, against defendant's moveable property, the *code marchand* was quoted by the trustees and rejected, and the effects ordered to be sold by the sheriff.

Answer XI. There has not been that certainty in a knowledge of the laws from the judicial determinations of the Court, that I have been able to instruct my clients what law should govern the case, except in some cases not of a commercial nature, where I considered the coutume to be decisive.

Extract from the Evidence of Thomas Walker, Attorney at Law, and Practitioner at the Bar, Quebec.

Answer VI. The judgments seldom expressed upon what law, or by what authority, they were decided; the Judge's ideas of right and wrong prevailed, I conceive, oftener than any law.

Answer

Answer to VII. In conducting the causes intrusted to me, I have quoted, as the best means of success, the statute and common law of England, the coutume de Paris, and edicts and ordinances of the French King, and the Roman and civil laws in writing and verbally, and have, to the best of my power, supported the admissibility of such part or parts of all or either of them, as I considered applied most favourably to my client's case, or which, from my experience in the Courts, I considered would have most weight with the Judges. To instance the causes wherein I have adopted this mode, would be to enumerate every cause of intricacy, or indeed of consequence, I ever was employed in.

Answer XI. There has not (as it is stated in the preceding answer) been that certainty in the knowledge of the laws from the judicial determinations, by which I could inform my clients on what authority I had gained or lost their suits.

Answer XIII. The complaints of the practisers at the bar have been so loud on the head of uncertainty, that every person must have heard them. It has ever been my constant opinion to clients, on consultation, that we were totally in the dark what law prevailed, and particularly in personal actions, that I knew not how to advise them for the best. I always considered the event of a suit depending upon the principles of law in the Courts in Canada

nada, as very precarious, and I appeal to those gentlemen whose causes I have conducted, or who have applied to me for advice, if I have not been uniform in this idea. *I have heard every gentleman of the profession here, and at Montreal, complain grievously of the irregularity in the Courts.* I recollect, at a meeting of the advocates of Quebec, some short time after his Honour the Chief Justice had requested them for information respecting the laws and practice, and their ideas of what alterations and amendments might be necessary, that *the whole body were unanimous, that we were in a state of disorder, confusion and uncertainty, in point of rules of law and practice,* out of which it was highly necessary we should be extricated.

Answer XVI. The irregularities that must necessarily arise in Courts where there is no rules of practice, or where the questions are involved in uncertainty, are inevitable and require remedy. Irregularities of another and more dangerous nature have arisen, either from the want of professional knowledge in the Judges, or from gross neglect or inattention; as for instance. In Sept. 1782, Cohen prosecuted Solomons for the recovery of a sum due to him as reader and killer of the synagogue, and which Solomons was liable for, as ruler thereof. Defendant denied the debt. Plaintiff produced evidence; and there-
upon

upon obtained judgment for his demand, with costs. Solomons appealed, and I was employed by Cohen to defend the appeal. Upon examining the record, I found that the depositions of the witnesses, produced by Cohen in the inferior Court, were not sent down. I thereupon moved the Court of Appeals for a rule on the Judges of the Court below to perfect the record. The rule was granted and transmitted. The Judges answered, and returned as follows, viz.

*" We certify, that Mess. Samuel and Uriah Judah
 " were examined as witnesses for the Plaintiff on the
 " trial of this cause, and from whose testimony the
 " cause appeared so clear, that we did not attend to
 " the taking down their evidence, not foreseeing an
 " appeal.*

(Signed)

*" Montreal, " JOHN FRASER,
 " 16th June, 1783. " HERTEL DE ROUVILLE."*

The consequence was, the Court of Appeals gave judgment upon the proofs before them. Solomon obtained a reversal of the judgment appealed from, and my client lost his cause, and thereby the money which appeared to the Judges so clearly due to him, and had about thirty pounds cost to pay, because the Judges did not foresee an appeal.

Aird against Chamont. In this case the judgment of the Court of Common Pleas, for the district

district of Montreal, was founded upon a deposition taken at Mr. Judge Frazer's country house, and certified by him to be the same in the following words :—

“ The same deposition was made in open Court before judgment was given, although, by some mistake, it was not taken down.

*“ Long-point, (Signed)
30th July, 1787. “ J. FRASER.”*

Though more than a month after judgment rendered.

I do consider the irregularities, in general, proceeded from the want of certainty in the administration of justice, and from a want of known laws, rules, and orders of practice, which ought to have been laid down by the Court. As far as my own experience and observation enable me to form an opinion, and indeed from the observations of all the gentlemen at the Bar, *I may safely assert, that no positive knowledge of the laws could be obtained from the judicial decisions of the Courts in this province ;* and so great was the uncertainty thereof, that after the argument of a cause, and before judgment, I have frequently seen the event or success of a suit decided among the advocates by the turning up of a piece of money, or the drawing of straws.

Answer

Answer XXI. Grace and favour may be applied with great propriety to a judgment rendered in the Common Pleas of Montreal.

La Breche versus Billaire, the judgment states,
 “ *Le tout considéré sans avoir égard aux temoins du*
 “ *demandeur, la cour renvoie le dit demandeur de son*
 “ *action avec depens*.*”

APPENDIX, No. XVI.

Being Extracts from the Evidence given before the Commissioner for the Investigation into the past Administration of Justice in the Province of Quebec.

Extract from the Evidence of William Goodall, Esq. Partner in the House of Brook Watson and Co. of London, Merchants.

Answer VIII. I have upwards of eight hundred debtors in this province; but from the uncertainty of

* *Translation.*—The Court having considered the whole, without paying any attention to the witnesses of the plaintiff, dismisses the said plaintiff from his action, with costs.

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the laws, and the great expence created by delays in the Courts, I am afraid to take legal methods to recover the debts which are due to me.

*Extract from the Evidence of John Young,
Merchant of Quebec.*

Answer IX. I never attended the Court of Common Pleas, either from curiosity, or on my own business, having never had a law suit, except as the attorney or agent of others; but during the times I have been obliged to attend, I have not heard, on any occasion, the Court or any of the Judges declare, that the bankrupt laws of France, or the Code Marchand of Louis XIV. made in 1673, or the Ordinance of 1702, were the laws of this province, until about fourteen or twenty days ago, I received in charge as a jurymen from the Bench, that where they were not altered by the ordinances of the Legislative Council, they were in full force.

*Extract from the Evidence of George Allsopp,
Esq. late of the Legislative Council, and Judge
in the Court of Appeals.*

Answer I. Respecting the causes wherein my own name or the names of persons I acted for,
do

do appear since the year 1776, in the consultations I have held with my advocates, Mr. Monk and Mr. Panet, at Quebec, they have always given me very doubtful opinions of success, not with regard to the justice of the causes I was concerned in, but with respect to *what the decision of the Judges might chance to be*, from the uncertainty of the laws in general, from not knowing whether the Judges would apply any, or what particular law to the case, or according to their wills give equitable decisions, upon the maxim laid down of doing, what the said Judges termed, substantial justice. *And this I have understood of the Court of Appeals, as well as the Court of Common Pleas at Quebec.*

Answer III. For the above, and other motives and reasons assigned in my answer to the first interrogatory, but especially from the opposition those Judges made to every salutary proposition offered by me to the said Council, in the sessions of 1779, 1780, 1781 and 1782, for a reform in the courts of law, for granting the King's subjects the laws of England in matters of commerce and personal wrongs, with the trial by a jury, and the benefit of the writ of *habeas corpus* for personal security as aforesaid, *I considered the said Judges as inimical to me and to my affairs, and have therefore dreaded, and been deterred, for many years past, from bringing suits into the Courts of Com-*

mon Pleas in this province; nor have I done so unless unavoidable.

*Extract from the Evidence of Andrew Cameron,
Merchant of Quebec.*

Answer II. I certainly have considered myself injured by the uncertainty of the laws and irregularity of proceedings. My suits of law have been in the Court of Common Pleas, for the district of Quebec. In 1786, I had a suit to defend with Mr. George Irwine in the said Court, and desired leave of the Court to offer proof, and have my evidence sworn to support my defence; but Mr. Judge Mabane *not only refused to hear my evidence, but to hear any arguments from my attorney, Mr. Robert Ruffel, to support my cause.* At a future day judgment was given against me by the said Court, *without hearing my said attorney, or admitting my evidence.* I afterwards appealed the cause; but upon consulting my counsel, *was obliged to drop my appeal for want of that evidence being admitted in the said Court of Common Pleas.*

*Extract from the Evidence of Mr. Alexander
Auldjo, Merchant of Montreal.*

Answer I. In November 1784, when the petition alluded to was signed, I was not in the province, therefore cannot say by whom or how many it was signed; but I have reason to believe, by a very considerable respectable number of of English and French, as well in the town as in the country. *Had I been in the province, I should have signed it, as I think it contains nothing that was not then, and now is, strictly true.*

Answer II. The uncertainty of the laws having infused in the generality of minds a want of confidence in the decisions of the Courts, I have avoided, as much as in my power, bringing causes before them; those I did were generally such as could not admit of uncertainty. In the action, myself against Loubet, my advocate, Mr. Powell, was in the utmost uncertainty respecting the event; but coinciding with me, that we had some chance from the uncertainty of the Court, I ordered him to proceed, and we prevailed. In the opposition made by Cartier to the distribution of Bernard's effects, I experienced such uncertainty and delays, and my advocate, Mr. Davidson, having declared it impossible to say how or when an end might be put to it; that I was obliged, with his advice to com-

pound with Cartier, to the very great loss of my constituents ; and I do declare, had I not taken that mode, it's my opinion it would not now have been settled.

Answer III. Delays and irregularities, as well as the uncertainty of the laws and decisions of the Courts, I have often heard complained of by all the English advocates at the Bar, and by my fellow citizens. *In the cause of J. la Croix against W. White, I have myself experienced it, having never been able to get a copy of the judgment, nor do I believe there is any such on the registers.*

Extract from the Evidence of Mr. Thomas Forsyth, Merchant of Montreal, Partner in the House of Robert Ellice and Co.

Answer II. I have heard several attorneys declare, that such was the uncertainty of the laws, they could hardly form any opinion on any case; that chance directed in a great measure the proceedings of the Courts.

Extract from the Evidence of Mr. Joseph Howard, Merchant of Montreal.

Answer II. Messrs. Powell and Walker have repeatedly complained to me of the uncertainty of
of

of the laws, (particularly Mr. Powell, when I applied to him for advice,) and of the mal-administration of justice in the Court of Common Pleas of this place; the Judges, they said, determined sometimes by French, sometimes by English law, and sometimes by a mixture of both.

Extract from the Evidence of Edward William Gray, Esq. Sheriff of the District of Montreal.

Answer VII. A cause where George Lyons was plaintiff and White defendant, in which this deponent, with Mr. Richard Dobie, as trustees to the estate of M^r Kenny and Caldwell, bankrupts, were admitted intervening parties, to oppose the delivery and payment of a certain sum of money seized and attached in the hands of the said bankrupts by the said George Lyons, judgment was given against the said deponent and the said Richard Dobie, in their said quality, *contrary to every principle of law, as this deponent conceives and believes.*

Answer IX. and X. John Frazer of London, Esq. asked my opinion, whether Mr. Powell would not be the most proper person to be employed as an attorney or advocate, in his affairs in the Court of Common Pleas, *observing that he had*

heard he was favourably attended to by Mr. Judge Frazer, and he accordingly employed him.

*Extract from the Evidence of Richard Dobie,
Merchant of Montreal.*

Answer II. I can scarce give a stronger instance than that of my cause with John Grant against William Taylor and Co. The judgment given in which was reversed in October last by Mr. Judge Frazer, with not a little violence of heat and passion, and to which the other two Judges, Mess. Rouville and Southouse, who had pronounced it, most tamely acquiesced, more than seventeen months after the date of it, when, according to the ordinance of the province for regulating such matters, so far as English could be understood, there could not legally be so much as an appeal towards getting it reversed by the Superior Court.

The case above referred to, of William Kay against David M'Crea, was fully argued before Mess. Frazer and Southouse, on the Saturday before Mr. Frazer set out for Quebec, in January 1787. On the Saturday following, Mr. De Rouville and Mr. Southouse were on the Bench, when the plaintiff's council, in the absence of the defendants (Mr. Powell being then at Quebec) moved for judgment; but Mr. De Rouville, on that day, very justly observed, how improper it would

would be in him to decide in a cause in which he had heard no part of the pleadings, that being the first time it was mentioned before him in Court ; but on the Monday or Tuesday following Mr. De Rouville and Mr. Southouse came both into the Court and immediately gave judgment, without hearing a single word on the part of the defendant.

I conceive it proper in me to add, that until the introduction of the *Coutume de Paris*, in the year 1775, I never heard any complaints touching the administration of justice ; but since that period, they have been loud and frequent, and, in my humble opinion, have arisen from the anarchy and confusion which prevail in the laws and courts of justice in the province, for determining of suits touching the property of *his Majesty's subjects*,

APPENDIX. No. XVII.

IN THE COURT OF APPEALS.

Brook Watson and *Robert Rasleigh*, and *Rasleigh*
and Others, and *William Goodall*, APPEL-
LANTS;

AND

Simon Frazer senior, Attorney to *Thomas Frank-
lin*, Plaintiff below, against *Robert Wilcocks*
Defendant, on Execution against his Real
Estate, RESPONDENT.

IN APPEAL, *Thursday 21st Feb. 1788.*

The parties, by their counsel, having been fully heard, it is by the consideration of this Court adjudged, that the judgment by the Court below be reversed with costs to the Appellants, to be taxed, and that the Appellants be restored to, and have, the benefit and preference given by law to the mortgage under which they made opposition and claim as valid and effectual in the law.

And pursuant to the ordinance of 27th George III. it is suggested as the ground of the judgment of this Court;

That

That, after the reſeizure of this country by the French crown, on ſurrender of the Company to whom it had before been granted, the French King, by his edict of 1663, afterwards regiſtered at Quebec on the 18th September of that year, placed it under a Sovereign Council in the country, with the cognizance of all cauſes civil and criminal, to judge ſovereignly, and in the laſt reſort, according to the laws and ordinances of his kingdom; and to proceed, *as nearly as might be*, in the form and manner practiſed and maintained in the juriſdiction of the Court of Parliament of Paris, reſerving to the French King nevertheless, agreeable to his ſovereign authority, power to alter, reform and enlarge the ſaid laws and ordinances; to repeal, aboliſh and make new, or ſuch other eſtabliſhments, ſtatutes and conſtitutions, as ſhould appear to him to be more uſeful to his ſervice, and for the welfare of his ſubjects of the ſaid country. That the Sovereign Council, ſo eſtabliſhed, was afterwards confirmed by an edict of the 5th June 1675, regiſtered at Quebec on the 23d September following, with certain alterations; among others, introducing into the ſame Sovereign Council an Intendant of Juſtice, Police and Finance, thereby commanding that the edict of 1663 ſhould be executed according to its form and tenor, ſo far as the ſame was thereby not altered. The

Intendant

Intendant being created President of the said Sovereign Council, and authorised to perform the functions, and enjoy the advantages, of the First or Chief President of the King's Court in France.

That the Court of Sovereign Council, (having under it subordinary Courts of Prevoté and Ordinary Justice) was maintained to the British conquest of the Colony, and accessions of authority and alterations made, signified by edicts, and other royal acts, registered from time to time in the records of the said Province.

That among other edicts in that interval, is one in June 1679, respecting the ordinance or *code civil* of Louis XIV. in 1667, which that edict of June 1679 alters to suit it to the condition of the Colony, and which *code civil* was altered at the instance of the Sovereign Council by procès verbal of the 7th November 1678, transmitted for the King's consideration, whose edict adopts the proposed alterations with exceptions, and contains the intimation that they were made agreeable to orders he had given for the execution of the said ordinance of 1667, and that the said edict of 1679 was registered in the Province on the 23d day of October 1679.

That neither the ordinance du commerce of March 1673, commonly called the *Code Marchand*, nor the Declaration of the 18th Nov. 1702, appears ever to have been registered in the records

records of the Sovereign Council, nor therefore could have been in legal and general use and practice prior to the conquest; *and since the conquest has sometimes been admitted to be law, and at other times denied, as well in the Courts of Common Pleas, as by the Court of Appeals, without any act or ordinance of the Provincial Legislature concerning the same.*

That the ancient laws of the Colony, consisting of so much of the coutume de Paris, divers parts of the Roman law, and the ordinances of the French King, anterior to the establishment of the Sovereign Council, as applied to the condition of the Province, and the subsequent French ordinances and edicts made to bind it, do not warrant the judgment of the Common Pleas; the mortgage in question not appearing to be one of those acts which the ancient laws rescinded, as done in *fraudem creditorum*, but valid within the rules *prior tempore, potior jure, vigilari, meliorem meam conditionem feci, et jus civile vigilantibus scriptum est*, no event having fallen out, nor any step been taken, to avoid the rights and powers of the mortgage to make the incumbrance aforesaid.

The modern European laws of bankruptcy, as the effect of improved policy and refinement, for the general utility and extended commerce, being not called for by the condition of a new country

country of husbandmen, thinly settled, under feudal tenures and an unlimited monarchy, not only accounts for the non-registry and non-adoption of the *Code Marchand*, and the later commercial edicts, but repels the doctrine that the edicts and ordinances of France indiscriminately made a part of the law of her Colonies; and shews the necessity of the rule, that the Colonists carried over with them only so much of the law of the mother country as was suited to their condition, and her posterior laws can't affect them without the clearest manifestation of the intention of the law-giver to bind them:—the contrary tenet being as absurd as that quackery which administers the same dose in all diseases, and to patients of every constitution.

That the Province had not been predisposed for the operation of the *Code Marchand in toto*, and that it cannot be extended by *parcels* by any authority less than that for which the legislature is competent, now happily at hand by the statute called the *Quebec Act*, to introduce such improvements of Great Britain, France and other nations, as the change in the condition of the Province (scarcely yet become a commercial one) may permit or require.

APPENDIX. No. XVIII.

Extract from the Motion by the Hon. William Grant, Esq. Member of the Legislative Council of Quebec, made in Council April 1784.

I PROPOSE that a Committee of this legislative body be named to take into consideration and prepare an humble address to his Majesty in Parliament *to request that he may be pleased to institute an Assembly, or such other constitutional and elective body, which may represent the people of this Province, in such manner, form, and in such numbers as his Majesty in his wisdom shall judge proper ; and that this Assembly, or Elective Body, may be invested with the ordinary powers of an English Colony Legislature.*

And I propose that the following, among other reasons, be alledged in favour of this address and proposition.

1st. That as the Quebec Bill restrains the Legislative Council from imposing taxes, except those which the inhabitants of a town or district may be authorised to impose, raise, and apply for making and repairing public roads and buildings, and for other local conveniences, on this account, *such an Assembly, or Elective Body, representing*

sending the people of this Province, is become absolutely necessary to its prosperity and happiness, as experience has now fully demonstrated that the power delegated to this Legislative Council relating to taxation, is not sufficient for the public exigences.

2d. *That twenty-four years experience proves that his Majesty's Canadian subjects expect (as they have always had it in view) that the constitutional government promised to them by the Royal Proclamation of October 1763, and by the 12th section of the Quebec Act, will be established.*

3d. That their hopes of obtaining in due time representatives of their own choice, is probably the reason that no town or district has, thus far, desired the aid or authority of this Council to impose, raise, or apply any tax whatever. On this account, all the public buildings of the Province, for convenience or safety, have been supported entirely at the expence of the Crown, though they are at present in a very ruinous situation, and becoming every day less fit for their original purposes.

5th. That the power of raising a revenue for supplying the wants of Government, and for encouraging such establishments as will promote industry, commerce, agriculture, &c. *and to be applied as the Representatives of the People may direct, is as essential to Government as to personal liberty,*

liberty, and to the natural rights of British subjects.

6th. That it be further considered, that as many of his Majesty's loyal but unfortunate subjects, formerly inhabitants of the Colonies, now the United States of America, desire to settle themselves in this Province of Quebec, whether a free representation, or other constitutional establishment, would not be the most effectual means of attaining such a desirable object—*the period is now arrived for putting the last hand to the formation, and for permanently fixing the legislature of this Province; and of rendering it thereby useful, instead of being a burthen to the people and crown of Great Britain; let us then humbly intreat his Majesty to embrace the opportunity.*

7th. *The Members of the Legislative Council being (as it is understood) removeable at the pleasure of the Crown, and many of them doubly so from holding other places of profit and public trust, and no qualification is required by law for such persons as are named for the Council, but residence in the Province,*

Nine Members assembled, being the majority of seventeen, are sufficient to form a Council to transact business, it follows therefore, that five Members, with the consent of his Majesty's Governor, can make laws to bind his Majesty's subjects in all cases.

Extract from the Protest of the Hon. William Grant, Esq. Member of the Legislative Council, made in Council, April 1784.

DISSENTIENT,

1st. Because he thinks that this Legislative Council (as it is established by the Quebec Act) *is not duly qualified to make such laws and ordinances as are absolutely necessary to promote the interests of commerce, the good government and the prosperity of the Province.*

2nd. Because his Majesty's subjects *can never enjoy solid happiness under any law for their internal government, in the framing of which they have not participated by their representatives elected by themselves.*

3d. Because I am convinced that his Majesty's ancient subjects will always extend their views and their demands for the performance of his Majesty's promise, solemnly given by his Royal Proclamation of the 7th October 1763, under the faith whereof they left their native country, and settled in this Province of Quebec.

5th. Because the English subjects have always considered *an elective representative body as their birth-right, as it forms the balance of power*
which

which secures liberty, and renders civil society mild and agreeable to man.

6th. Because *I firmly believe, in my conscience, that it is now the interest of Great Britain generously to grant to this Colony a constitution and form of Government calculated not only to satisfy all the inhabitants, but, by its benefits, advantages and liberty, to excite the envy of the New Independent American States, and to make them regret their separation from that beneficent Mother Country, of whose protection, humanity and freedom, they had received so many signal proofs.*

7th. Because *I am of opinion, that a free participation in the Government is better adapted to unite the subjects, to rouse their emulation and to extend and improve their understanding, than any other form of Government whatever, however mild it may be.*

8th. Because the principal use of this country to Great Britain appears to be for the consumption of her manufactures, and for supplying the West India Islands with horses, wood, flour, &c. her European allies with fish and flour, and herself with hemp, lumber, furs, oil, &c. To promote the progress of these branches of commerce, it will be necessary to direct the attention of the people to the great objects of agriculture, the fisheries and trade; and to give vi-

gour and life to this great commercial machine. And I insist and maintain, that the best and most natural means of making it move with spirit and success, will be a free Government and elective representation. The power to excite and animate industry ought to be placed in the hands of those persons, who probably, from their pursuits, are obliged to make mercantile affairs their principal study and employment.

Extract from the Protest by the Hon. Henry Hamilton, Esq. Lieutenant Governor of the Province, and Member of the Legislative Council, made in Council, April 1784.

DISSENTIENT,

1st. The state and circumstances of the Province are totally changed since the publication of the *Quebec Act*; its present limits, the independence of its neighbours, the establishment of the loyalists, with their families, in it—these things involve matter for the most serious consideration, and require answers to the following questions :—Is the Province at present in the most advantageous situation? Are the laws, the trade of the Province, and the privileges and liberty of the people, upon that footing that is most likely to excite
among

among strangers the desire of settling in it, and the inhabitants the desire of staying in it?

I will venture to say, that every possible encouragement ought to be given by Government—the free exercise of religion, the advantages which flow from peace, the extension of commerce, and the exemption, as much as possible, from taxes, in order to induce a preference of the British Government, and to compensate the inconveniencies of the climate and situation.

APPENDIX. No. XIX.

Extract from Observations published by the English and French Committees of the Cities of Quebec and Montreal, with the Signature thereto in February 1785.

NOUS nous attendons qu'il y aura de l'opposition à nos adresses ; *mais elle ne viendra que de la part de ceux qui considéreront plus leurs interets que ceux*

du public. Les changements d'Administration et de Gouvernement sont le plus souvent funestes aux personnes qui ont des places lucratives, parce que plusieurs d'elles les ayant obtenues par faveur, il leur est naturel de s'opposer à tout ce qui pourroit leur faire craindre la perte de leurs emplois ou de leurs appointements ; c'est pourquoi, nous vous prions d'examiner nôtre état et nôtre profession, et de les comparer à l'état et à la profession de ceux qui s'opposeront à nos adresses, et vous jugerez aisément des motifs qui les feront agir.

A présent que nous avons mis notre adresse sous les yeux du public, et que nous lui avons expliqué toutes nos intentions et nos idées sur les diverses demandes qu'elle contient, nous soumettons le tout à la réflexion et au jugement de ce public, pour qui nous entendons que seront les avantages de la réforme qu'on demande. *Nous n'avons et nous ne pouvons avoir aucun intérêt séparé du sien, dans cette adresse nous n'avons cherché que notre bonheur et celui de notre postérité, dans le bonheur général de la province.* Nous le repetons encore, nous ne demandons ni places ou offices, ni pensions du Gouvernement, nos demandes sont générales et s'étendent à tous les individus de la province, et nous nous croirons suffisamment récompensés des peines que nous nous sommes donné

donné dans cette affaire, *si le bonheur et la tranquillité de nos compatriotes peuvent en resulter* *.

Signed by all the Members of the Committees.

* *Translation.*—We expect that there will be some opposition to our Petitions ; but it will proceed only from those who pay more attention to their own private views and interest, than to those of the public. All changes in the Government or Administration, are dangerous to such persons as hold lucrative places and posts, because they are most commonly obtained by favour ; it is therefore very natural that they should oppose every thing that may endanger the loss of their places or appointments. On that account we request you will pay particular attention to our situation in life, and to the professions we follow, and compare them with the situations and professions of those who may oppose our Petitions, and you will be able easily to judge of the motives which influence either party.

Having now laid our Petition before the public, and having explained all our intentions and ideas on the different clauses of it, we submit the whole to the consideration and judgment of that public for whom all the benefits and advantages of the reform demanded, are intended. We have not, nor can we have any views of interest separate from the public. In these petitions we have sought for our own happiness and that of our posterity, in the general happiness of the province. We again repeat it, that we neither ask for posts, places, or pensions from Government ; our requests are general, and include every individual of the province ; and we shall consider ourselves as sufficiently recompensed for the trouble we have had in this affair, if the happiness and tranquillity of our fellow subjects are thereby more perfectly secured.

APPENDIX, No. XX.

*To his Excellency the Right Hon. Guy Lord
Dorchester.*

Humbly Sheweth,

THAT at a public meeting of the citizens of Quebec and Montreal respectively, held in the fall of the year 1784, a Committee from their number was chosen, for the purpose of framing and conducting Petitions to his Majesty, and to both Houses of Parliament, which Petitions were dated in November of that year, and signed by upwards of two thousand three hundred old and new subjects; that several vacancies in the Committee then chosen having occasionally happened, by death and otherwise, new members were necessarily appointed; that the members of the said Committee so chosen and continued, have the honour to address your Lordship on behalf of themselves and their constituents, the subscribers to the aforesaid Petition of 1784, and to shew, that, by your Lordship's condescension, the inhabitants of this Province have been favoured with a publication, in the Quebec Gazette, of the Petitions to his Majesty and to your Lordship, lately presented in the name of the Canadians,

dians, bearing date the thirteenth day of October last past, and signed by a considerable body of landholders and others, his Majesty's new subjects, to the number of seven hundred and forty-four, in opposition to the objects of reform proposed in the Petition of 1784, already mentioned, and to the steps which have been taken in conducting it.

That your Memorialists, in attending to the interests of their constituents, and their own, have thought it their indispensable duty to take into consideration the various matters and assertions contained in the aforesaid Petition of the 13th of October, and humbly to state to your Lordship in reply thereto, that his Majesty's old and new subjects, by their Petition of 1784, praying for a House of Assembly, and the introduction of the laws of England regarding commerce, had not the most distant wish or intention to procure the abolition of the ancient laws and customs of Canada, as is asserted by their opponents; on the contrary, a continuation of the said laws and customs is expressly and particularly prayed for in the said Petition of 1784, Article IV.—as will more fully appear to your Lordship by a printed copy thereof hereunto annexed—that contrary to the conduct and assertion of their opponents, the Petitioners of 1784 proceeded candidly, publicly and impartially, in framing their Petition,

which

which was printed in the French language, and dispersed it into all parts of the country, accompanied with explanatory observations and arguments which yet remain unanswered.

That his Majesty's Canadian subjects, who joined in the said Petition of 1784, to the number of one thousand five hundred and eighteen, *and whose sentiments and wishes are still the same, are more than double in number, and not less respectable, than the Petitioners of the 13th of October last, in point of loyalty, wealth, character, or knowledge of the true interests of this Province.*

That the agent of the said Petitioners of 1784, in carrying forward their Petition to the notice and discussion of Parliament, was not guilty either of temerity or injustice in presenting himself in the name of, and as agent for, those Petitioners, being unanimously chosen and empowered for that purpose by the English and Canadian Committees, representing the whole body of Petitioners, whether old or new subjects.

Your Memorialists beg leave to observe to your Excellency, that many of the Petitioners of the 13th October last, did, in a Petition to the Throne in the year 1783, complain of the actual legislature in a more pointed manner than is set forth in our Petition of 1784, yet they do not now ask for any reform in the present system of government; but prefer a distinction among his Majesty's

ty's subjects; notwithstanding that in the afore-
 said Petition of 1783, they pray, " that whatever
 " form of government it shall please his Majesty
 " to establish in this Province, they may be ad-
 " mitted freely, and without distinction, to par-
 " ticipate in the precious rights and privileges
 " which his Majesty's subjects enjoy, in what-
 " ever part of the empire they are situated."
Your Lordship being fully sensible that British subjects
consider as one of their most valuable privileges, the
right of being represented in the legislature, your Pe-
 tioners humbly conceive, that to them it more
 properly belongs to remark, that to refuse them
 this distinguishing privilege, implies a doubt of
 that loyalty and attachment which they have never
 ceased to demonstrate.

Your Memorialists yield with reluctance to a
 necessary part of their duty, in remarking to your
 Lordship, with all due respect, *that in the list of*
their opponents appear the names of Judges, Counsel-
lors, and others, in the enjoyment of pensions and
places of profit under the present system of government,
 to the amount of two thousand seven hundred
 and forty-five pounds, upon which circumstance
 they forbear to comment. That in the said list,
 particularly among the seigniors, *the names of some*
appear who are not seigniors, and of others who
 having assumed titles to which they are found to
 have no pretensions; we submit to your Lord-
 ship

ship what weight persons of those descriptions, ought justly to have in the present case.

That the Petitioners of the 13th October last, having represented themselves to his Majesty, and to your Lordship, as the great proprietors or principal landholders in this province, your Memorialists think it incumbent on them to state to your Lordship, from the best information they can procure, an account of all the seigniories in Canada, (those of his Majesty and the religious communities excepted) with an estimate of their annual value, which is hereunto annexed, and humbly submitted to your Lordship's knowledge and information. By the aforesaid estimate, your Lordship will observe, *that the annual revenue of the seigniories, in the possession of his Majesty's ancient subjects, exceeds the sum of ten thousand pounds.*

That the seigniories possessed by his Majesty's new subjects, who have not joined in the petition of the 13th October last, are computed at the yearly income of eight thousand eight hundred and ninety-five pounds, whilst the seigniories belonging to the subscribers to that address do not amount in annual revenue to six thousand pounds; from this comparative statement, which your memorialists have reason to consider as free from error as the nature of the enquiry will admit of, your Excellency may judge how far the Petitioners of the 13th October last are entitled to that pre-eminence
which

which they claim, and if the real and personal estates of all the other Petitioners of 1784, could be thus contrasted with those of their opponents, the great superiority of the former would be still more evident and striking, especially as the commercial property in this province, whether belonging to the merchants of Great Britain or Canada, is almost wholly represented by the Petitioners of 1784, an estimate of which was submitted to the Honourable Legislative Council in their session of 1787, *amounting to the sum of one million two hundred and forty-six thousand and twenty-three pounds, six shillings and eight-pence.* Your Memorialists beg leave further to add, that the extensive and valuable possessions of the numerous loyalists and others lately settled in this province, and which are daily encreasing, are not reckoned and comprehended in any of the foregoing estimates.

That the opposition made by the petition of the 13th of October last, to that of November 1784, being *thus founded on mistaken principles, and on supposed facts which do not exist,* must necessarily lose that weight which it might otherwise have had, by the sanction of some respectable names.

Your Petitioners therefore unite with their Opponents in praying, *that your Lordship will be pleased to report and characterise both parties in such a manner*

a manner as will shew to our most gracious Sovereign, and the British Parliament, the true importance, possessions, and interests of the one and the other.

And your Petitioners, as in duty bound,
will ever pray, &c. &c.

Montreal, 1st December 1788.

Quebec, 5th December 1788.

Signed by the English and French Com-
mittees of the Cities of Quebec and Mon-
real.

A new Method of procuring Signatures to Petitions, practised by the Promoters of the Counter Petitions in the Province of Quebec.

PARDEVANT le notaire public residant au bourg de Boucherville Soufigné, le dix neuf Decembre après midi, a été convoquée et assemblée la noblesse, des bourgeois et habitans de la paroisse de Boucherville, lesquels ont unanimement dit et déclaré, que ne pouvant pas se transporter à Montreal, pour approuver par leurs signatures, l'adresse faite à sa Majesté, déterminée à Montreal le seize du present mois, tendante au maintien de nos loix civiles, et à ce que le libre exercice de la religion catholique, soit laissé tel, et ainsi que nous avons joui de ce droit avant la conquete de cette Province; nous chargeons Monsieur de Boucherville de signer pour nous, promettant avoir le tout pour agreable, fait et passé au bourg de Boucherville l'an mil sept cent quatre vingt quatre, le dix neuf Decembre, et ont signés après lecture faite suivant l'ordonnance.

REMARQUES.

1^{mo}. La procuration est passée le 19 Decembre. Monsieur St. Ours prouve que l'adresse de l'opposition n'a été redigée que le 23. Avant ce tems il n'étoit pas question d'y inserer l'opposition

sition à l'établissement d'une Chambre d'assemblée.

2^{do}. Le Procureur fondé a outre passé son pouvoir—en signant un article dont il n'est point fait mention dans cette procuration.



FINIS